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## LAW ENFORCEMENT LIABILITY LAW DIGEST

## by Don Hays

## October – 2017

## In the United States Supreme Court:

**1. Rehberg v. Paulk**, 566 U. S. \_\_\_, (No. 10-788, April 2, 2012) Denial of Motion to Dismiss Complaint - - Reversed and Remanded.

**ISSUES:** Liability (Grand Jury Testimony): Is a police officer immune from liability for his testimony before a Grand Jury? (Yes)

**TRIAL:** A grand jury target brought a § 1983 action against a district attorney, a specially appointed prosecutor, and the chief investigator for district attorney's office, alleging that they violated his constitutional rights by fabricating evidence against him. The United States District Court denied the defendants' motion to dismiss on basis of qualified immunity. The defendants appealed. The United States Court of Appeals affirmed, and certiorari was granted.

**APPEAL:** The Supreme Court held that a grand jury witness is entitled to the same immunity as a trial witness in actions under § 1983.

**RULE:** Under § 1983, every person who acts under color of state law to deprive another of a constitutional right is answerable to that person in a suit for damages. **RULE:** In determining whether an official is entitled to immunity in a § 1983 action, the Supreme Court conducts a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it. **RULE:** In determining whether an official is entitled to immunity in a § 1983 action, the Supreme Court consults the common law to identify those governmental functions that were historically viewed as so important and vulnerable to interference by means of litigation that some form of absolute immunity from civil liability was needed to ensure that they are performed with independence and without fear of consequences.

**FINDING:** Grand jury witness was entitled to absolute immunity from claims that he presented and conspired to present false testimony before the grand jury in § 1983 action brought by the grand jury's target. **FINDING:** A trial witness sued under § 1983 has absolute immunity with respect to any claim based on the witness' testimony. **FINDING:** Grand jury witnesses should enjoy the same immunity as witnesses at trial; this means that a grand jury witness has absolute immunity from any § 1983 claim based on the witness' testimony. **FINDING:** A grand jury witness' absolute immunity from § 1983 claims may not be circumvented by claiming that the witness conspired to present false testimony or by using evidence of the witness' testimony to support any other § 1983 claim concerning the initiation or maintenance of a prosecution. **FINDING:** A grand jury witness is entitled to the same immunity as a trial witness in actions under § 1983.

**2. Wilkins v. Gaddy, 130 S. Ct. 1175, (U. S. Sup. Ct., No. 08-10914, February 22, 2010)** The petitioner, Jamey Wilkins, a North Carolina state prisoner, filed suit pursuant to 42 U. S. C. § 1983. Wilkins alleged that he was “maliciously and sadistically” assaulted “[w]ithout any provocation” by a corrections officer, respondent Gaddy. According to the complaint, Gaddy, apparently angered by Wilkins’ request for a grievance form, “snatched [Wilkins] off the ground and slammed him onto the concrete floor.” Gaddy “then proceeded to punch, kick, knee and choke [Wilkins] until another officer had to physically remove him from [Wilkins].” Wilkins further alleged that, “[a]s a result of the excessive force used by [Gaddy], [he] sustained multiple physical injuries including a bruised heel, lower back pain, increased blood pressure, as well as migraine headaches and dizziness” and “psychological trauma and mental anguish including depression, panic attacks and nightmares of the assault.” The District Court, on its own motion and without a response from Gaddy, dismissed Wilkins’ complaint for failure to state a claim. Citing Circuit precedent, the court stated that, “[i]n order to state an excessive force claim under the Eighth Amendment, a plaintiff must establish that he received more than a de minimus [sic] injury.” In a summary disposition, the Court of Appeals affirmed “for the reasons stated by the district court.” **ISSUE:** Should excessive force claims be based upon the extent of injury to the victim or on the nature of the force used? **ANSWER:** The Supreme Court ruled that the nature of the force used should be used to determine excessive force. For this reason, the Supreme Court reversed the dismissal of the defendant’s complaint.

**3. Pearson et al. v. Callahan, 129 S. Ct. 808, (U. S. Sup. Ct., No. 07-751, January 21, 2009)** After his conviction for possession and distribution of drugs, which he sold to an undercover informant he had voluntarily admitted into his house was vacated, the defendant brought a civil rights action for damages in federal court, alleging that the defendants, the officers who supervised and conducted the warrantless search of the premises that led to his arrest after the sale, had violated the Fourth Amendment. The District Court granted summary judgment in favor of the officers. Noting that other courts had adopted the "consent-once-removed" doctrine--which permits a warrantless police entry into a home when consent to enter has already been granted to an undercover officer who has observed contraband in plain view--the court concluded that the officers were entitled to qualified immunity because they could reasonably have believed that the doctrine authorized their conduct. The Federal Court of Appeals held that the defendants were not entitled to qualified immunity. The court disapproved broadening the consent-once-removed doctrine to situations in which the person granted initial consent was not an undercover officer, but merely an informant. It further held that the Fourth Amendment right to be free in one's home from unreasonable searches and arrests was clearly established at the time of respondent's arrest, and determined that, under this Court's clearly established precedents, warrantless entries into a home are per se unreasonable unless they satisfy one of the two established exceptions for consent and exigent circumstances. The court concluded that the defendants could not reasonably have believed that their conduct was lawful because they knew that (1) they had no warrant; (2) respondent had not consented to their entry; and (3) his consent to the entry of an informant could not reasonably be interpreted to extend to them. **ISSUE:** Were the defendants immune from liability. **ANSWER:** Yes. The Supreme Court ruled that the officers were entitled to qualified immunity because it was not clearly established at the time of the search that their conduct was unconstitutional.

**4. Van de Kamp et al. v. Goldstein, 129 S. Ct. 855, (U. S. Sup. Ct., No. 07-854, January 26, 2009)** The plaintiff was released from a California prison after he filed a successful federal habeas petition alleging that his murder conviction depended, in critical part, on the false testimony of a jailhouse informant , who had received reduced sentences for providing prosecutors with favorable testimony in other cases; that prosecutors knew, but failed to give his attorney, this potential impeachment information; and that, among other things, that failure had led to his erroneous conviction. Once released, the plaintiff filed this suit under 42 U. S. C. §1983, asserting the prosecution violated its constitutional duty to communicate impeachment information, due to the failure of the defendants, supervisory prosecutors, to properly train or supervise prosecutors or to establish an information system containing potential impeachment material about informants. Claiming absolute immunity, the defendants moved to dismiss the complaint, but the court declined, finding that the conduct of the defendants was "administrative," not "prosecutorial," and hence fell outside the scope of an absolute immunity claim. The Ninth Circuit, on interlocutory appeal, affirmed. **ISSUE:** Were the defendants immune from liability. **ANSWER:** Yes. The Supreme Court ruled that the defendants were entitled to absolute immunity in respect to the plaintiff’s supervision, training, and information-system management claims.

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

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

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

**8. Garcetti et. al. v. Ceballos, 126 S. Ct. 1951, (U. S. Sup. Ct., No. 04-473, May 30, 2006)** The plaintiff in this case was a supervising deputy district attorney. He believed that the police in a case he was watching had made some “serious misrepresentations.” In support of this belief, he wrote a memorandum to his supervisors stating his concerns and advocating the dismissal of various pending charges. At a hearing in that case, the plaintiff stated his concerns in open court. The case proceeded to trial notwithstanding the plaintiff’s objections and, thereafter, at least according to the plaintiff, he was “retaliated against” by his supervisors in violation of his First and Fourteenth Amendment rights. The plaintiff brought a Section 1983 action and the Federal District Court granted summary judgment for the defendants. The Federal Court of Appeals reversed and ruled that the allegations of the Plaintiff were protected speech. **ISSUE:** Did this plaintiff have a constitutional right to speak out as he did? **ANSWER:** No. The Supreme Court ruled that when public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.

**9. Town of Castle Rock v. Gonzales, 125 S. Ct. 2796, (U. S. Sup. Ct., No. 04-278, June 27, 2005)** The plaintiff in this case called the police and informed them that her estranged husband had taken their three children in violation of a court issued restraining order. The police did little or nothing about this complaint. Eventually, the husband pulled up in front of the local police station, pulled out a handgun and opened fire. The police returned fire and killed the husband. Inside of the husband’s truck the police discovered the bodies of the plaintiff’s three children. They had been murdered by their father. Based upon their lack of effort in enforcing the restraining order, the plaintiff brought a section 1983 action and argued that the conduct of the police denied the plaintiff due process. The Federal District Court granted the City’s motion to dismiss, but the Federal Court of Appeals reversed. **ISSUE:** Did the mother of the murdered children have a property interest in the police enforcement of her restraining order against her husband. **ANSWER:** No. For purposes of the Due Process Clause of the United State’s Constitution, the plaintiff did not have any such property interest that would support a section 1983 action.

**10. Muehler et al., v. Mena, 125 S. Ct. 1495, (U. S. Sup. Ct., No. 03-1423, March 22, 2005) FACTS:** The police obtained a search warrant to search a house for deadly weapons and evidence of gang activity. The plaintiff in this case was an occupant of a house the police wanted to search. During their search of the plaintiff’s house, the police placed her in handcuffs and sat her down to wait. While the police conducted their search, a police officer and an INS agent questioned the plaintiff about her immigration status. At the conclusion of their search (about 2 or 3 hours later), the plaintiff was released from custody**. ISSUE:**  Was the plaintiff’s constitutional rights violated when she was placed in handcuffs during the search of the house she occupied? **ANSWER:**  No. The interests of the police in their safety during their legal search outweighed any interest the plaintiff possessed. **ISSUE:** Did the police violate the plaintiff’s constitutional rights when they questioned the plaintiff during her detention? **ANSWER:** No. Mere police questioning does not constitute a seizure. The police did not need an independent reasonable suspicion to justify their questioning of the plaintiff.

**11. Devenpeck et al. v. Alford, 125 S. Ct. 588, (U. S. Sup. Ct., No. 03-710, December 13, 2004)**  **FACTS:** Believing that the defendant was impersonating a police officer, a local officer pulled the defendant’s car over. While questioning the defendant, the officer noticed that the suspect was taping their conversation. Believing that this conduct violated the Privacy Act of that State, the officer placed the defendant under arrest. After determining that the defendant’s conduct did not, in fact, violate the Privacy Act, the charges against him were dropped. The defendant then brought a 1983 action against everybody. The trial court denied the defendant officer qualified immunity but the jury found in his favor anyway. The Federal Court of Appeals reversed and ruled that the officer could not have had probable cause to arrest the defendant on the impersonating an officer charge because that charge was not “closely related” to the offense invoked by the officer, a Privacy Act violation. **ISSUE:** Did the Court of Appeals correctly invoke this “closely related” doctrine concerning probable cause**? ANSWER:** No. So long as probable cause to arrest exists, the arrest of the suspect was reasonable. The actual offense articulated by the arresting officer was irrelevant.

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

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

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

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

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

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

**In the Illinois Supreme Court**

**1. Ries and Martinez v. City of Chicago \_\_\_ Ill. 2d \_\_\_, (Ill. Sup. Ct., No. 109541, February 25, 2011)** A police officer was called to the scene of a potential hit-and-run incident. Several citizens informed the officer that a man had just caused an accident and was attempting to leave. The officer seized the man and placed him in the back of his squad car. The officer did not handcuff the man. While the officer was talking with various witnesses, the man jumped behind the steering wheel of the officer’s car and drove away. It seems that the officer left the keys in his car when he arrived on the scene. The defendant sped away and two officers pursued him. During this pursuit, the defendant crashed into the plaintiffs in this case and injured them. **ISSUE:** Was the officer or the City liable for the injuries of the plaintiffs caused by the crash? **ANSWER: *No.*** Both the officers and the City were immune from liability.

**2. Hurlbert v. Charles, 238 Ill. 2d 248, (Ill. Sup. Ct., No. 109041, September 23, 2010):** The plaintiff was arrested for DUI. Taken to the County Jail, he declined to submit to a breathalyzer test, and, thus, pursuant to statute, his driving privileges were summarily suspended. He filed a timely petition to rescind the suspension, but the trial court denied it, finding that there had, indeed, been probable cause for his arrest. However, thereafter, the DUI prosecution against him was dismissed with prejudice. The plaintiff they sued the police department for malicious prosecution. **ISSUE:** Do the parties have to re-litigate whether or not the police acted with probable cause. **ANSWER: *Yes.*** The Supreme Court ruled that the proceedings concerning a driver’s license are civil and are supposed to be summary, rather than drawn out, and, in these hearings, law enforcement officers’ official reports can be relied upon in the absence of the officers themselves. If the People believed that the results of a driver’s license proceeding can be given preclusive effect, there would be an incentive to turn the summary proceeding into a mini-trial, with full witness presentation, which is not what the legislature intended. Therefore, no collateral estoppel effect should be allowed as the result of such license proceedings.

**3. Lacey v. Village of Palatine, 232 Ill. 2d 349, (Ill. Sup. Ct., No. 106353, February 20, 2009)** The police discovered that the victim’s husband was shopping around for a hit man to kill the victim. They warned the victim of this threat and promised her protection. The defendant’s attorney assured the police that his client had no intention of killing his wife. The police never arrested the husband or charged him with any crime. The police then closed the case and never told the victim that the case was closed. The police never provided the protection to the victim that was promised. The husband then killed the victim and her mother. **ISSUE:** Were the police entitled to absolute immunity from liability for failing to provide police protection to the victims? **ANSWER: *Yes.*** The Supreme Court ruled that in this case the police were not enforcing the Illinois Domestic Violence Act when the victim was killed. Therefore, they were absolutely immune from liability.

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

**5. Moore v. Green et al., 302 Ill. Dec. 451, (Ill. Sup. Ct, No. 100029, April 20, 2006)** The police were called to the scene of a domestic dispute where the wife had called 911 and informed the police that her husband, who had an outstanding order-of-protection issued against him, was in her house and threatening her. According to various witnesses, the police arrived on the scene, but left shortly thereafter without investigating or assisting the wife. Five minutes later the husband shot his wife to death. A Section 1983 action was thereafter filed wherein the wife’s estate asserted wrongful death and survival actions. The defendants moved to dismiss, claiming absolute immunity for failing to make an arrest. The trial court denied this motion, but certified the question of whether the defendant’s were absolutely immune from liability to the appellate court. The appellate court ruled that the deputies were not immune from liability. The defendants then brought this appeal before the Illinois Supreme Court. **ISSUE:** Does the Illinois Tort Immunity Act immunize the defendant’s in this case from liability where they failed to take action to assist the victim? **ANSWER:** ***No, it does not.*** According to the Supreme Court, the Illinois Domestic Violence Act controls and it provides that the defendants may, in fact, be liable if their conduct constituted willful and wanton acts or omissions.

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

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

**In the Illinois Appellate Courts:**

**2014**

**1. Payne v. City of Chicago,** 2014 IL App. (1st) 123010, (1st Dist., July 16, 2014) Grant of Summary Judgment - - Affirmed.

**ISSUE: Law Enforcement Liability:** Were the police immune from liability when they rendered a service to a citizen and the citizen was injured as a result? (Yes)

**COURT ANALYSIS:** Summary judgment was properly granted to the City of Chicago based on section 4-102 of the Tort Immunity Act in an action for the injuries suffered by plaintiff when he jumped or fell out of a second-floor window after being “tased” by a police officer responding to a call for assistance with plaintiff, who was high on crack, “wigging out,” and suffering hallucinations, since the police were providing a service and were afforded unqualified immunity under section 4-102.

**2. Lorenz v. Pledge,** 2014 IL App. (3rd) 130137, (3rd Dist., ~~February 5, 2014~~, (*Modified upon denial of Rehearing: June 24, 2014*) Judgment in favor of Sheriff’s Department - - Reversed and Remanded.

**FACTS:** A County sheriff's department received a call regarding an erratically driven sport utility vehicle (SUV). A Deputy, who responded to the call, located and observed the SUV. His squad video activated, and after seeing the SUV swerve several times, the Deputy effectuated a traffic stop. As the Deputy approached the stopped SUV, it sped away, and he pursued the vehicle. The SUV and the Deputy reached speeds as high as 110 miles per hour and was traveling at 100 miles per hour approximately four seconds before he entered an intersection. The SUV turned off its headlights as it neared the intersection. At the same time the SUV and the Deputy were speeding toward the intersection, a minivan entered the intersection's center turn lane. The SUV passed through the intersection, and the minivan began a left turn, the squad entered the intersection and struck the minivan on the passenger side. The Deputy, and two passengers in the minivan were injured, and a third passenger was killed in the accident.

**ISSUE: Law Enforcement Liability:** Should a jury determine whether or not this Deputy Sheriff’s high-speed chase constituted willful and wanton misconduct? (Yes)

**3. Davis v. City of Chicago,** 2014 IL App. (1st) 122427, (1st Dist., March 12, 2014) Grant of Motion for a New Trial - - Reversed and Remanded**.**

**ISSUE: Law Enforcement Liability:** Did the trial court properly grant this plaintiff’s motion for a new trial in her wrongful death action against a police officer for shooting the plaintiff’s son dead based upon the opening arguments of the defense counsel or based upon faulty jury instructions? (No)

**COURT ANALYSIS:** In a wrongful death and survival action arising from an incident in which plaintiff’s son was fatally shot by defendant police officer while being pursued on foot by the officer, the trial court’s grant of a new trial to plaintiff based solely on remarks made by defense counsel in opening statements regarding a pending weapons charge against the deceased was reversed, since that evidence had been ruled admissible at the time the statements were made, the statements were made in good faith, there was no indication plaintiff was prejudiced by the statements, and any objection by plaintiff was waived when she opposed the grant of a new trial on that basis; therefore, the order granting a new trial was reversed and vacated and the verdict for defendants was directed to stand.

**2013**

**1. Betts v. City of Chicago,** 2013 IL App (1st) 123653, (1st Dist., November 22, 2013) Dismissal of Complaint - - Reversed and Remanded.

**ISSUES:** Liability (Immunity): Did the trial court properly find that this officer and the City he works for were immune from liability for injuries suffered as the result of an automobile accident? (No)

**TRIAL:** Motorist brought action against city and city police officer, alleging that officer negligently backed his vehicle into motorist's vehicle, proximately causing injury to motorist. Defendants filed motion to dismiss on grounds of governmental immunity. The Trial Court entered an order dismissing the plaintiff's complaint with prejudice. The plaintiff appealed.

**APPEAL:** The Appellate Court held that issue of whether defendants were entitled to governmental immunity could not be resolved by motion to dismiss, in view of factual dispute as to whether officer was executing or enforcing the law at the time of the collision.

**FINDING:** Issue of whether city and city police officer were entitled to immunity under Local Governmental and Governmental Employees Tort Immunity Act in motorist's action alleging that officer negligently backed his vehicle into motorist's vehicle could not be resolved by motion to dismiss, in view of factual dispute as to whether officer was executing or enforcing the law at the time of the collision; although officer's interrogatory responses indicated that he was assisting with narcotics surveillance at time he struck motorist's vehicle, officer's responses did not indicate whether he or other members of surveillance team had actually observed the commission of a crime on date of incident and failed to provide information regarding the narcotics investigation and extent of officer's involvement therein.

**2. Prough v. Madison County,** 2013 IL App (5th) 110146, (5th Dist., February 25, 2013) Dismissal of Action - - Affirmed.

**ISSUE:** Liability: Was the County liable for the conduct of a suspect they released from custody? (No)

**TRIAL:** Administrator of father's estate brought action against county, state, sheriff's department, and various employees of sheriff's department, seeking damages for death of father who was killed by his son after he was released from the custody of the sheriff's department. The Trial Court dismissed the administrator's complaint, and he appealed.

**APPEAL:** The Appellate Court held that the defendants were absolutely immune from any claim which sought to hold them liable for failing to provide adequate police protection.

**COURT ANALYSIS:** In an action arising from the murder of plaintiff’s decedent by decedent’s son after the son was released from custody by defendant sheriff’s deputies, the dismissal of plaintiff’s complaint was upheld on the ground that defendants were immune from liability under the Tort Immunity Act, since sections 4-102 and 4-107 of the Act provide absolute immunity from liability for the failures alleged, despite plaintiff’s attempt to frame his claim in terms of failing to execute a valid order to detain the killer and present him for a mental health examination.

**RULE:** A unit of local government is liable in tort to the same extent as a private party unless an immunity established by the legislature in the Local Governmental and Governmental Employees Tort Immunity Act applies. **RULE:** Purpose of the Local Governmental and Governmental Employees Tort Immunity Act is to protect local public entities and public employees from liability arising from the operation of government; by enacting immunity provisions, the legislature sought to prevent the diversion of public funds from their intended purpose to the payment of damage claims. **RULE:** Local Governmental and Governmental Employees Tort Immunity Act must be strictly construed because it was enacted in derogation of the common law.

**FINDING:** State, county, sheriff's department, and department employees were absolutely immune from any claim by the administrator of decedent's estate which sought to hold defendants liable for failing to provide adequate police protection by retaining decedent's son in their custody, for failing to prevent the commission of son's crime in killing decedent, and/or for releasing son from their custody; provision of the Local Governmental and Governmental Employees Tort Immunity Act that neither a local public entity nor a public employee is liable for an injury caused by the failure to make an arrest or by releasing a person in custody provided absolute immunity against claims of negligence and wanton misconduct.

**3. Fenton v. City of Chicago,** 2013 IL App (1st) 111596, (1st Dist., January 17, 2013) Finding of Liability - - Affirmed.

**ISSUES:** Liability: Were the police properly found liable for failing to protect a Domestic Violence victim? (Yes)

**TRIAL:** The Special administrator of an estate brought an action against the city, asserting a violation of the Domestic Violence Act based on the conduct of police officers that allegedly resulted in the victim's murder. The Trial Court entered judgment, on a jury verdict, for the estate. The City appealed.

**APPEAL:** The Appellate Court held that: (a) the evidence in this case supported a finding that the victim was an abused person within meaning of the Domestic Violence Act; (b) the evidence supported a finding that the officers' actions constituted willful and wanton misconduct within meaning of the Act; (c) the evidence supported a finding that the officers' actions were proximate cause of victim's death; (d) the trial court properly permitted the estate's expert to testify regarding probable cause.

**COURT ANALYSIS:** In an action arising from the fatal beating inflicted on plaintiff’s decedent by the son of decedent’s girlfriend at the end of a night of violent arguments, including two 911 calls that led to police intervention, the judgment entered against defendant city in excess of $2 million was affirmed, since decedent was an “abused person” within the meaning of the Domestic Violence Act, testimony that defendant’s police officers had probable cause to arrest the son was properly admitted, and the officers’ wilful and wanton conduct in leaving the scene without arresting the son and merely ordering him to wait outside until his girlfriend could take him to another location was a proximate cause of decedent’s death.

**FINDING #1:** Evidence was sufficient to support finding that victim, who had called 911 and reported violence in his home, was an abused person within the meaning of the Domestic Violence Act, within the duty of law enforcement to intervene under the Act. According to the appellate court, “domestic disturbance” was law enforcement tag given to each of the victim's 911 calls. The officers had been told that the victim and his girlfriend's son had been arguing prior to each of the calls, and officers' observations of son's use of alcohol and his violent, jerky movements should have alerted them that the situation had surpassed mere argument.

**FINDING #2:** Evidence was sufficient to support finding that police officers exhibited utter disregard for safety of victim in responding to domestic disturbance calls, such that their action and inactions constituted wilful and wanton misconduct within meaning of the Domestic Violence Act; officers observed drunken, boisterous, and unpredictable behavior of victim's assailant following victim's first two 911 calls, officers admitted they performed inadequate investigation at scene, and, although evidence supported finding that officers had probable cause to arrest assailant for harassment or disturbing peace, following victim's second 911 call, officers merely escorted assailant to sidewalk after leaving victim behind.

**RULE #1:** There is no requirement that the plaintiff prove conduct that approaches intentional acts in order to prove “willful and wanton misconduct,” which is properly described as occupying that area between simple negligence and intentional wrongdoing.

**FINDING #3:** Evidence was sufficient to support finding that police officers' wilful and wanton misconduct in responding to domestic disturbance calls of victim of abuse, within meaning of the Domestic Violence Act, was proximate cause of victim's death by his girlfriend's son; after responding to two domestic disturbance calls and observing a drunken young man arguing with his mother and the victim, instead of arresting the man, officers left him less than a block from scene of the confrontation, and one officer instructed mother to lock the door to home because he was contemplating the possibility that her son might return.

**FINDING #4:** City raised no contemporaneous objection and, thus, forfeited its argument that trial court improperly allowed plaintiff's expert witness to testify that police officers had probable cause to arrest the victim's assailant in civil suit against city, based on officers' alleged violation of Domestic Violence Act; although city raised probable cause issue in its pre-trial motion in limine, when witness was asked during trial as to whether police had probable cause to arrest assailant, defense counsel objected to “foundation” for the question and did not refer back to the city's motion in limine.

**RULE #2:** “Foundation” was established to allow plaintiff to ask his expert whether police had probable cause to arrest victim's assailant during domestic disturbance calls, in civil suit against city for officer's alleged violation of Domestic Violence Act, inasmuch as expert possessed necessary qualifications and training on police procedures relative to domestic disturbances, and had reviewed city's related police department general orders and all of the reports from underlying occurrence and investigation into beating of victim.

**FINDING #5:** Admission of expert witness's opinion, as to whether police officers had probable cause to arrest domestic disturbance victim's assailant, for purposes of plaintiff's civil suit against city based on officers' alleged violations of Domestic Violence Act, was not improper; because plaintiff claimed that officers were wilful and wanton in their failure to arrest assailant and remove him from premises, it was axiomatic that police officer had to have probable cause to believe assailant had committed a crime before arrest could be made, and given evidence that officer offered to arrest assailant, whom officers claimed to lack probable cause to arrest, trial court was entitled to find that jury could benefit from expert who could give them a better understanding of the concept than pattern jury instruction.

**2012 CASES**

**1. Murray v. Poani, 2012 IL App (4th) 120059, December 14, 2012**

This is a Law Enforcement Liability Case. It dealt with the repossession of a car.

**FACTS:**  During the early hours of the morning, the plaintiffs (Anthony and Sharon) were in their home. Their 2004 Pontiac Grand Prix sedan sat in the driveway. Something awoke Sharon and she went to investigate. Outside, Sharon encountered a repossession team attempting to tow her Pontiac. She protested and a confrontation ensued. The defendant police officer arrived on the scene. (The officer's affidavit asserts that a member of the repossession team named “Brandon” contacted the police about a “paperwork dispute” and the officer was dispatched to the plaintiffs' residence.) Sharon accused the repossession team of “stealing” her car. Sharon presented the officer with “receipts” showing she was current on her monthly car payments and not in default. The officer refused to look at the “receipts.” Sharon accused the officer of assisting in the “theft” of her car. The officer explained “It does not matter, they have a valid repossession order, you have to give them the keys.” (The officer’s affidavit states he advised Sharon “this was a civil matter” and he could not interfere.) Sharon continued her protestations and the officer told her “If you continue to interfere, I will have to detain you.” (The officer's affidavit disputes he threatened to arrest Sharon.) The officer remained on the scene during the entire repossession. (The officer's affidavit concedes he left the residence after the vehicle was repossessed.) The Plaintiffs originally pleaded the officer's actions were pursuant to an established policy of the police department. However, the Plaintiffs' counter-affidavits did not refute the officer's affidavit stating the police department does not have an official policy, custom, or plan to provide official assistance or aid in the repossession of automobiles by private parties. The trial court granted the defendants' motion for summary judgment and this appeal followed.

**ARGUMENTS:** The plaintiff argued that the trial court erred in finding for the defendant officer.

**ISSUES AND FINDING:** **1)** Did the officer violate the Plaintiffs’ civil rights? The Court held that a civil rights claim requires a showing of (1) a deprivation, (2) a property interest, and (3) state action. The Court noted that the plaintiffs were deprived of their property interest in their Pontiac. As the defendant Officer was in uniform and on duty as a police officer at the time of the incident, there is no issue as to whether he was a state actor during the repossession. The real question is whether the deprivation occurred as a result of state action. The plaintiffs argued that the Officer became actively involved in the repossession by threatening to arrest Sharon if she continued to interfere with the repossession and ordering her to turn over the vehicle's keys. Therefore, in this case, the issue was whether or not the officer merely kept the peace or actively assisted in the repossession. The Court ruled that this was a question of fact for the jury to decide. Therefore, the trial court erred in granting the defendant officer’s motion for summary judgment. **2)** Was the officer immune from liability? The Court noted that in a civil rights action, the plaintiff must show that the defendants violated a constitutional right; and (2) whether that constitutional right was clearly established at the time of the alleged violation.” In this case the Court concluded that a reasonable officer would have understood aiding a re-possessor by threatening the debtor with arrest and ordering her to turn over the vehicle keys was clearly established as constitutionally impermissible. Therefore, the Court ruled that the facts did show the Officer may have engaged in unconstitutional conduct and would not be entitled to qualified immunity. Again, this was an issue for the jury to decide.

**2. Stehlik v. Village of Orland Park,** 2012 IL App (1st) 091278, (1st Dist., February 17, 2012) Dismissal of Action - - Affirmed.

 **ISSUE:** Did the trial court properly find that a police officer was immune from liability following a traffic accident? (Yes)

**TRIAL:** Motorists injured when their automobile was struck by police squad car brought a personal injury action against the officer and his municipality. The Trial Court entered a directed verdict in favor of the defendants. The motorists appealed.

**APPEAL:** The Appellate Court held that: (a) this police officer was executing or enforcing the law at time of collision, and thus was entitled to public employee immunity, and (b) the evidence would not support a finding that officer acted willfully and wantonly.

**COURT ANALYSIS:** In an action for the injuries suffered when plaintiffs’ vehicle was struck by a police officer’s squad car, the trial court properly entered a directed verdict against plaintiffs and dismissed the action based on the finding that the officer and the village where he was employed were immune from liability under the Tort Immunity Act because the officer was engaged in the execution or enforcement of the law at the time of the collision and there was no evidence that the officer acted willfully or wantonly.

**3. Murphy v. Poani,** 2012 IL App (4th) 120059, (4th Dist., December 14, 2012) Grant of Summary Judgment - - Reversed and Remanded.

**ISSUE:** Liability: Did the trial court properly grant summary judgment to a defendant police officer where the officer may have assisted in the private repossession of a car? (No)

**TRIAL:** The purported owners of a vehicle brought a § 1983 action against this police officer and his police department alleging a violation of the owners' due process rights based on the officer's involvement in a private vehicle repossession. The Trial Court granted summary judgment for defendants.

**APPEAL:** The Appellate Court held that: (a) triable factual issues precluded summary judgment on issue of state action, and (b) triable factual issues precluded summary judgment on issue of qualified immunity.

**RULE #1:** To plead a § 1983 claim for violation of due process, a plaintiff must allege that a state actor deprived him of a property or liberty interest without due process of law. **RULE #2:** To determine whether a police officer involved in a private vehicle repossession acted under color of state law, as required for a viable § 1983 claim, courts should examine the circumstances of officer's role in the repossession in their totality. **RULE #3:** A police officer's mere presence at the scene of a private repossession is insufficient to constitute state action for purposes of § 1983; however when an officer begins to take a more active hand in the repossession the police assistance may cause a private repossession to take on the character of state action. **RULE #4:** Factors that may indicate state action created by police response during a private repossession includes: (1) an officer's arrival with the repossessor; (2) intervening in more than one step of the repossession process; (3) failing to depart before completion of the repossession; (4) standing in close proximity to the creditor; (5) unreasonably recognizing the documentation of one party over another; (6) telling the debtor the seizure is legal; and (7) ordering the debtor to stop interfering or be arrested. **RULE #5:** A “breach of the peace” under property repossession statute means “conduct which incites or is likely to incite immediate public turbulence, or which leads to or is likely to lead to an immediate loss of public order and tranquility.” **RULE #6:** “Clearly established,” for purposes of qualified immunity, means that the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. **RULE #7:** Earlier cases need not involve fundamentally similar or materially similar facts for officials to be on notice that their conduct violates clearly established law and thus is not protected by qualified immunity.

**FINDING #1:** Genuine issue of material fact as to police officer's level of involvement in a private repossession of vehicle and whether he exceeded his role as a peacekeeper precluded summary judgment on the issue of state action in purported vehicle owners' § 1983 action alleging a due process violation. **FINDING #2:** Genuine issue of material fact as to police officer's involvement in a private repossession of a vehicle precluded summary judgment on qualified immunity in purported vehicle owners' § 1983 action alleging a due process violation.

**2011 CASES**

**Doe v. Village of Schaumburg**, 2011 IL App (1st) 093,300, (1st Dist., No. 1-09-3971, June 30, 2011) Dismissal of Action - - Affirmed.

**ISSUE:** Liability: Were the police liable for failing to inform a school that one of their students was a convicted sex offender? (No)

**FACTS:** On July 21, 2004, Schaumburg police arrested Christopher Girard for aggravated criminal sexual assault of a minor child. Defendants Ulmer, Jameson and Kwiatkowski participated in Girard's arrest and investigation of his case. They also had information that Girard was attending summer school at Hoffman Estates High School at the time, but they did not report his arrest to the school district or to the principal of the high school. Instead, on October 15, 2004, Ulmer informed Hoffman Estates police officer Gary Sears of Girard's arrest. Sears was the resource officer assigned to District 211. Sears did not report the arrest to school officials despite the existence of a reciprocal reporting agreement between Hoffman Estates and Township High School District 211 (District 211), which includes Hoffman Estates High School. The agreement provided that “police officials will report to school officials \* \* \* with respect to a minor enrolled in one of the School District's schools who has been taken into custody or arrested for” criminal sexual assault, in accordance with section 22–20 of the School Code. From August to October 2005, Girard was enrolled in a physical science class at Hoffman Estates High School. Minor Doe and minors Amy, Ann, Jane, and Mary Roe, who were enrolled in a special education program at the high school, also attended the class. During the class, Girard forcibly engaged in various acts with them such as touching their “breasts, vagina and buttock” and anal and vaginal penetration. In August 2007, Girard pleaded guilty to a number of sexual assault charges, including charges of assaulting girls at Hoffman Estates High School in 2005.

**TRIAL:** High school students and their parents brought action against two villages, village police departments, and individual police officers, alleging that defendants had negligently failed to inform school officials about the arrest of assailant for sexual assault, allegedly causing assailant to be allowed to attend class with students and commit assaults on them. The Trial Court dismissed the claims, and the students and parents appealed.

**APPEAL:** The Appellate Court held that defendants were immune from claims under Local Governmental and Governmental Employees Tort Immunity Act.

**RULE:** Government entities and employees bear the burden of proving immunity under the Local Governmental and Governmental Employees Tort Immunity Act. **RULE:** By providing immunity to local public entities and public employees from liability arising from the operation of government, the legislature, under the Local Governmental and Governmental Employees Tort Immunity Act, sought to prevent the diversion of public funds from their intended purpose to the payment of damage claims.

**FINDING:** Villages, village police departments, and individual police officers were immune, pursuant to section of Local Governmental and Governmental Employees Tort Immunity Act providing immunity for claims alleging failure to provide adequate police protection or service or failure to prevent the commission of crimes, from claims by high school students and their parents arising from defendants' alleged failure to inform school officials of the arrest of assailant on charge of aggravated criminal sexual assault of a minor child, allegedly causing assailant to be allowed to attend class with students and commit sexual assaults on them.

**2010 CASES**

**1. Jackson v. County of Kane, 399 Ill. App. 3d 451, (2nd Dist., No. 2-09-0032, March 31, 2010):** The inmates in the Kane County jail were served food on cracked or broken trays. They claimed that this violated Illinois law. For that reason, the inmates brought this suit. ISSUE: Did the trial court properly dismiss this action. **ANSWER: *Yes.*** The inmates failed to allege that they suffered “serious or significant physical or emotional injury” as a result of the conduct of the Sheriff. Therefore, the complaint was properly dismissed.

**2. Rivera v. Garcia, 927 N.E. 2d 1235, (1st Dist., No. 1-09-0786, April 30, 2010):** Thieves stole the gold chain off of the neck of an off-duty police officer’s son. The officer recruited two fellow officers and went looking for the thieves. They found them and a high-speed chase soon followed. Unfortunately, the officers were in an undercover car during this chase and their department regulations prohibited undercover cars from being used in such pursuits. At the conclusion of the chase, the driver of the car being chased was shot dead and a passenger injured. **ISSUE:** Was the conduct of the officers a proximate cause of the injuries suffered by the plaintiffs? **ANSWER: Yes, they were.**

**2009 CASES**

**1. Pleasance v. City of Chicago 336 Ill. Dec. 363, (1st Dist., No. 1-08-1510, December 14, 2009)** An officer in this case was in the process of placing a suspect under arrest. During this attempt, his service weapon accidently discharged and killed a bystander. The deceased was 23 years old when he died. He was unmarried and lived with his mother. He was not employed, he never held a consistent job and he was learning disabled. He dropped out of high school in the eleventh grade and had spent almost two years in prison on a drug possession conviction. He regularly drank alcohol and smoked marijuana. The City admitted liability in this case and attempted to limit the trial thereafter only to the issue of damages. Following a trial, a jury returned a $12.5 million verdict against the City in favor of the mother of the deceased. **ISSUE:** Did the conduct of the plaintiff’s attorney deny the City a fair trial? **ANSWER: Yes.** The attorney repeatedly alleged that the officer’s conduct was willful and wanton. This was error.

**2. Ries and Martinez v. City of Chicago 396 Ill. App. 3d 418, (1st Dist., No. 1-07-3085, November 25, 2009)** A police officer was called to the scene of a potential hit-and-run incident. Several citizens informed the officer that a man had just caused an accident and was attempting to leave. The officer seized the man and placed him in the back of his squad car. The officer did not handcuff the man. While the officer was talking with various witnesses, the man jumped behind the steering wheel of the officer’s car and drove away. It seems that the officer left the keys in his car when he arrived on the scene. The defendant sped away and two officers pursued him. During this pursuit, the defendant crashed into the plaintiffs in this case and injured them. **ISSUE:** Was the officer or the City liable for the injuries of the plaintiffs caused by the crash?  **ANSWER: No.** Both the officers and the City were immune from liability.

**3. Porter v. City of Chicago 393 Ill. App. 3d 855, (1st Dist., No. 1-06-1438, July 31, 2009)** Someone shot two people to death in Chicago. The police believed that the plaintiff in this case did it. They arrested him and, following a jury trial, he was convicted. A private detective working for Northwestern University’s “Center for Wrongful Convictions” found another person to confess to the murders. This convinced ex-Governor Ryan to grant the Plaintiff a pardon. (Interestingly, this other person later recanted his confession and alleged that the private detective had induced him into confessing by promising him money from a book and movie deal based on the Plaintiff’s case and by stating that a law professor at Northwestern would “pull some strings” and get him released.) The plaintiff then brought this suit against the defendants and alleged malicious prosecution. The trial court granted summary judgment for some of the defendants and a jury found in favor of the rest of the defendants. **ISSUE:** Did the ruling of the trial court deny the Plaintiff due process? **ANSWER: No.**

 **4. Beyer v. City of Joliet 392 Ill. App. 3d 81, (3rd Dist., No. 3-08-0032, June 2, 2009)** The victim was shot and killed by her husband. A special administrator of the estate of the victim brought suit against the City of Joliet and three Joliet police officers (defendants). The plaintiff alleged that the death of the victim was the result of the defendants' willful and wanton breach of their duties under the Illinois Domestic Violence Act of 1986. (750 ILCS 60/101). The defendants filed a motion to dismiss and argued that: (1) the plaintiff failed to plead facts to show that the victim was a protected person, specifically suggesting that the plaintiff must have already obtained an order of protection in order to be a protected person; and (2) the plaintiff failed to allege any willful and wanton acts or omissions on behalf of the police officers. The trial court granted the defendants' motion to dismiss and this appeal followed. **ISSUE:** Did the trial court properly grant the defendant’s motion to dismiss? **ANSWER:** No. The appellate court found that obtaining an order of protection is not a condition precedent to pursuing a claim under the Act because such a requirement would be contrary to the express language of the Act and would defeat the legislative intent. Further, the Court ruled that in this case the pleadings of the plaintiff were sufficient to show that the victim was a person in need of protection and that the conduct of the police, in failing to assist the victim, was willful and wanton. **NOTE: The Court did not hold that the plaintiff would win this case at trial. It merely ruled that the allegations of the plaintiff were sufficient to allow such a trial.**

**5. Wilson v. City of Decatur 389 Ill. App. 3d 555, (4th Dist., No. 4-08-0566, April 28, 2009)** In December of 2006, the plaintiff in this case was on private property where she had a lawful right to be. While there, a dog, without provocation by her, came upon the property, attacked her, and injured her. On that date, the City was the dog's owner, as defined in section2.16 of the Animal Control Act (510 ILCS 5/2.16 (West 2006)). In fact, the dog was a trained police dog that traveled in City police squad cars. The plaintiff sought recovery for damages resulting from the dog attack under the Animal Control Act. The City moved to dismiss the case based upon the Illinois Governmental Tort Immunity Act. It argued that it was immune from liability for the conduct of the dog. It contended, inter alia, (1) pursuant to section 2-202 of the [Tort Immunity Act], a local government employee is not liable for any act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct, and (2) pursuant to section 2-109 of the Tort Immunity Act, a local public entity is not liable for an injury resulting from an act or omission of its employee where its employee is not liable. The trial court concluded that the incident in question occurred during the course of a police investigation, and that the dog's handler was a police officer employed by the City engaged in the course of his duties as a police officer. Finding that the plaintiff failed to plead that the conduct of the dog’s handler was willful and wanton, the trial court granted the City’s motion. This appeal followed. **ISSUE:** Did the trial court properly grant the defendant’s motion to dismiss? **ANSWER:** No. It ruled that pursuant to the Animal Control Act, the City, as the owner of the dog, was strictly liable for the conduct of the dog. The Tort Immunity Act did not overrule the Animal Control Act. Therefore, the trial court erred in granting the plaintiff’s motion to dismiss.

**2008 CASES**

**1. Keener v. City of Herrin 385 Ill. App. 3d 545, (5th Dist., No. 5-06-0501, October 6, 2008) WARNING: This case has been overturned by the Supreme Court.** In the early morning hours of the day in question, the victim, who was 18 years old, consumed alcoholic beverages to the point of intoxication. At approximately 3:30 a.m., officers for the police department took the victim into custody and charged her with the offense of underage consumption of alcohol. At that time she was allegedly incoherent and legally intoxicated with a blood-alcohol level of 0.18. The police department was allegedly notified that an adult would come to the police station to pick up the victim. However, at approximately 4:40 a.m., the police department allegedly allowed the victim to leave the police station unattended, without any assistance, and while she was still intoxicated. At approximately 5 a.m., a vehicle struck and killed the victim as she walked on a city street. The mother of the victim them brought suit and alleged that the defendant was guilty of negligent and willful and wanton conduct by allowing the victim to leave the custody of the police department unattended and unsupervised while in an intoxicated state, failing to maintain the victim in custody until an adult could pick her up, and failing to follow its own policies and procedures for handling the arrest and release of an intoxicated minor. Thereafter, the defendant's motion to dismiss this complaint was granted. From that ruling, this appeal was brought. **ISSUE:** Did the trial court properly grant the defendant’s motion to dismiss? **ANSWER:** Yes, but only in part. It ruled that the trial court properly dismissed the plaintiff’s allegation that the defendant acted negligently. The defendant was immune from liability for mere negligence under these circumstances. However, concerning the issue of the defendant’s alleged willful and wanton conduct, the appellate court reached a different result. It ruled that in this case the police officers were potentially liable for their alleged willful and wanton conduct after they “exercised control” over the victim. That is, after they arrested her. In effect, the Court ruled that had the police not arrested the victim and taken her into custody, they would have been absolutely immune from liability. However, when they chose to “exercise control” over the victim, they lost their absolute immunity and could potentially be held liable for their conduct.

**2007 CASES**

**1.** **Williams v. City of Evanston, 378 Ill. App. 3d 590, (1st Dist., No. 1-06-3392, December 28, 2007)** The defendant, an Evanston firefighter/EMT was driving an ambulance when it collided with a vehicle driven by Williams. Williams and his passenger were injured and they sued defendant and the City and argued that the negligent driving of the defendant caused the accident and their injuries.  **ISSUE:** Was the defendant and the City liable for injures allegedly caused by the negligence of the defendant? **ANSWER:** Under the Tort Immunity Act, the defendant (and thus the City) was immune from liability for mere negligence because the defendant was public employee engaged in the execution of his duties.

**2. Hudson v. City of Chicago, 317 Ill. Dec. 262, (1st Dist., No. 1-05-2822, December 14, 2007)** On the day in question the defendant, a police officer, heard a radio broadcast that a pursuit was in progress. The defendant, without being ordered to do so and in seeming violation of agency policy, decided to drive in the direction of the pursuit. She wanted to be available in case the officers who were involved in the pursued needed assistance. On the way to the location of the pursuit, the defendant was involved in an accident. The plaintiff in this case was injured as a result of that accident and recovered in excess of $17.5 million after a jury trial. **ISSUE:** Was the defendant (and the City) immune from liability as a result of the alleged negligence of the defendant that caused the accident? **ANSWER:** No. The officer here was not engaged in the execution or enforcement of the law when she was involved in her accident. Therefore, under the Tort Immunity Act, she was not immune from liability for mere negligence.

**3. Boyd v. City of Chicago, 317 Ill. Dec. 41, (1st Dist., No. 1-06-0358, December 5, 2007)** The defendant, an off-duty police officer, was standing outside of a bar early in the morning when he was jumped by six men. One of those men, the plaintiff in this case, knocked the defendant to the ground and then drew a gun. The defendant drew his gun and shot the plaintiff in the leg. When the men ran away, the defendant reported this incident to the police and they arrested the plaintiff. He was charged with simple battery and his case was dismissed after the defendant failed to show up for a court hearing. The plaintiff then sued the City for battery, false arrest, and malicious prosecution. **ISSUE:** Was the City liable? **ANSWER:** 1. Battery? No, self defense is a defense for civil liability. 2. False Arrest? No, the police had probable cause to arrest the plaintiff. 3. Malicious Prosecution? No. The plaintiff could not prove that the underlying criminal charges were decided in his favor.

**4. Shuttlesworth v. City of Chicago, 316 Ill. Dec. 581, (1st Dist., No. 1-06-3433, November 5, 2007) The** police were involved in a high speed chase. The car the police were chasing crashed into a car occupied by the plaintiffs in this case. The plaintiffs sued the police and the City for their injuries. **ISSUE:** Were the police (and the City) liable for the plaintiff’s injuries? **ANSWER:** No. The plaintiffs could not prove that the actions of the officers constituted willful and wanton conduct.

**5. Luss v. Village of Forest Park, 316 Ill. Dec. 169, (1st Dist., No. 1-06-0731, November 5, 2007)** The security agents of a local department store detained a man for shoplifting. During their struggle with this man, the agents sprayed him with mace. The police were called and they transported the man to jail. Because the man was combative (and HIV positive), the officers, in violation of their own internal rules, did not take the defendant’s belt from him. Two hours later the man hanged himself with his belt. **ISSUES: 1.** Were the police liable for failing to prevent the man’s suicide attempt? **ANSWER:** No, the suicide attempt was not foreseeable. **2.** Were the police liable for failing to take reasonable steps to assist the man after he was found hanging? **ANSWER:** No, the plaintiff could not prove that the man might have been saved had the police acted quicker or if they had used other means to help the man.

**2006 CASES**

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

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

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

**4. Smith v. Boudreau, 304 Ill. Dec. 183, (1st Dist., No. 1-04-3175, June 29, 2006)** On October 20, 1992, the plaintiff in this case was arrested and taken to the police station for questioning concerning the murder of his grandfather and his great-aunt. On April 8, 1994, the defendant brought a federal action alleging that excessive force had been used against him in order to obtain his confession. On May 20, 1994, the defendant was convicted in state court of the murders. The federal judge dismissed the defendant’s action and ruled that his federal civil rights action could not proceed until his appeal of his conviction has been decided. In July of 2002, the defendant’s final appeal in his criminal case was decided. In July of 2003, the defendant filed a civil action in state court seeking redress for the excessive force used against him. The trial court ruled that the action was untimely and granted a motion to dismiss. **ISSUE:** Did the Statute of Limitations bar this defendant’s civil action? **ANSWER: Yes.**

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

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

**2005 CASES**

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

**2004 CASES**

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

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

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

**2003 CASES**

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

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

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

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

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

**2002 CASES**

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

**1999 CASES**

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

## In the Seventh Circuit Court of Appeals

**1.** [**Jackson v. Willis**](http://law.justia.com/cases/federal/appellate-courts/ca7/14-3226/14-3226-2016-12-27.html), **No. 14-3226, 844 F.3d 696, December 27, 2016**

**ISSUE:** Were the defendant Correctional officials liable for the use of excessive force and the failure to protect?

**FACTS:**  Pro se state inmate brought action against lieutenant at correctional facility and corrections officer, asserting Eighth Amendment claims for excessive force and failure to protect. Following jury trial, the United States District Court entered judgment in favor of defendants. Inmate appealed.

**APPEAL:** The Court of Appeals held that: (a) the district court did not abuse its discretion in denying inmate's request for continuance; (b) district court did not abuse its discretion in admitting disciplinary report regarding inmate's prior refusal of a transfer; and (c) inmate failed to demonstrate that his substantial rights were affected when defense counsel asked whether he was incarcerated for a felony.

 **2. Murphy v. Smith**, **No. 15-3384, 844 F.3d 653, December 21, 2016.**

**ISSUE:** Were these correctional officers liable for the use of excessive force against an inmate and for failing to provide medical attention to an inmate?

**FACTS:**  Inmate brought action against correctional officers, claiming that officers hit inmate, fracturing part of his eye socket, and left him in a cell without medical attention, in violation of § 1983 and state law. The United States District Court for the Southern District of Illinois, entered judgment for inmate, following jury verdict, and awarded attorney fees. Correctional officers appealed.

**APPEAL:** The Court of Appeals held that: (a) these officers did not waive state-law immunity under the Illinois State Lawsuit Immunity Act; (b) sovereign immunity under Illinois State Lawsuit Immunity Act did not bar inmate's § 1983 and state law battery claims; and (c) Prison Litigation Reform Act requires 25% of any monetary judgment received by a prisoner be awarded to as attorneys' fees.

 **3.** [**Foreman v. Wadsworth**](http://law.justia.com/cases/federal/appellate-courts/ca7/15-3096/15-3096-2016-12-20.html), **No. 15-3096, 844 F.3d 620, December 20, 2016**.

**ISSUES: (1)** Was the prosecutor liable here? **(2)** Did the District Court properly impose sanctions against the defendant’s attorney?

**FACTS:**  Arrestee brought action against state prosecutor and police officers, alleging claims for false arrest under § 1983 and Illinois state law. The United States District Court dismissed claims and publicly censured arrestee's attorney. Arrestee and attorney appealed.

**APPEAL:** The Court of Appeals held that: (a) the state prosecutor was absolutely immune from arrestee's § 1983 claims; (b) the arrestee waived right to challenge on appeal magistrate judge's denial of request to extend time for discovery; and (c) it was within district court's discretion to censure arrestee's attorney.

 **4. Brunson v. Murray**, **No. 14-2877, 843 F.3d 698, December 13, 2016.**

**ISSUES:** (1) was the city prosecutor entitled to absolute prosecutorial immunity; (2) did genuine issues of material fact precluded summary judgment on owner's class-of-one equal protection claim; (3) did the police chief falsely arrest the owner; and (d) did absolute judicial immunity apply to liquor commissioner's non-renewal decision?

**FACTS:**  Owner of liquor store brought § 1983 action against city and various city officials, alleging that officials denied his application for renewal of his liquor license and harassed him in violation of his equal protection and due process rights, and that he was falsely arrested following altercation with one of mayor's associates. The United States District Court granted defendants' motion for summary judgment. Owner appealed.

**APPEAL:** The Court of Appeals held that: (a) Is this city prosecutor entitled to absolute prosecutorial immunity; (b) genuine issues of material fact precluded summary judgment on owner's class-of-one equal protection claim; (c) police chief did not falsely arrest owner; and (d) absolute judicial immunity did not apply to liquor commissioner's non-renewal decision, overruling Reed v. Village of Shorewood, 704 F.2d 943.

 **5. Haywood v. Hathaway**, **No.** **12-1678, 842 F.3d 1026, November 29, 2016.**

**ISSUES:** (1) was the inmate's First Amendment claim barred by the Heck v. Humphrey's favorable termination requirement, and (b) was summary judgment on inmate's Eighth Amendment claim warranted?

**FACTS:**  State inmate filed § 1983 action against prison officials alleging that his disciplinary conviction for making false statements violated his right to free speech, and that conditions of his confinement in segregation were cruel and unusual. The United States District Court dismissed free speech claim and entered summary judgment in officials' favor on Eighth Amendment claim. Inmate appealed.

**APPEAL:** The Court of Appeals held that: (a) this inmate's First Amendment claim was barred by Heck v. Humphrey's favorable termination requirement, and (b) summary judgment on inmate's Eighth Amendment claim was not warranted.

**FIINDING #1:** State inmate's § 1983 action alleging that his disciplinary conviction for making false statements violated his right to free speech was barred by Heck v. Humphrey's favorable termination requirement, even though inmate waived any challenge to duration of his confinement, where conviction had not been set aside at time suit was filed, and award of damages would have necessarily implied conviction's invalidity. **FIINDING #2:** Genuine issues of material fact as to whether warden knew of extreme cold in segregation unit, causes of that cold, and inmate's inability to shut his window, and whether warden's responses to that situation were appropriate precluded summary judgment in inmate's § 1983 action alleging that warden was deliberately indifferent to extreme cold he suffered, in violation of Eighth Amendment.

 **6. Viramontes v. City of Chicago,** **No. 15-2826, 840 F.3d 423, October 21, 2016.**

**ISSUES:** (1) Did the content of the Gilbert instruction given by district court have to track exactly with words used in criminal complaint; (b) did the district court have to wait until arrestee first attempted to contradict the facts underlying his conviction before giving a Gilbert instruction; (c) was the district court's error, in preventing the arrestee from arguing that the officer was not reliable witness because his testimony had changed over time, prejudicial; and (d) Did the improper closing arguments by the officers' attorney, that the arrestee's prior criminal convictions demonstrated that he had propensity for violence, and that the officers were “stars,” rise to level of prejudicial error?

**FACTS:**  Arrestee brought § 1983 action against officers who allegedly used excessive force to affect his arrest. The United States District Court entered judgment in favor of arresting officers and denied arrestee's motion for new trial, and arrestee appealed.

**APPEAL:** The Court of Appeals held that: (a) content of Gilbert instruction given by district court did not have to track exactly with words used in criminal complaint; (b) district court did not have to wait until arrestee first attempted to contradict the facts underlying his conviction before giving a Gilbert instruction; (c) district court's error, in preventing arrestee from arguing that officer was not reliable witness because his testimony had changed over time, was not prejudicial; and (d) improper closing arguments by officers' attorney, that arrestee's prior criminal convictions demonstrated that he had propensity for violence, and that the officers were “stars,” did not rise to level of prejudicial error.

Affirmed.

 **7. Tapley v. Chambers**, **No. 15-3013, 840 F.3d 370, October 19, 2016.**

**ISSUES:** (a) was dismissing motorist's appeal of summary judgment in prior suit appropriate, and (b) Did the officer have probable cause to stop motorist's vehicle and arrest him?

**FACTS:**  Motorist brought § 1983 action against city and several police officers, alleging illegal seizure arising from traffic stop that was same incident giving rise to claim that motorist voluntarily dismissed in prior suit. The United States District Court granted defendants' summary judgment motion. Motorist appealed, seeking review of both present and prior suits.

**APPEAL:** The Court of Appeals held that: (a) the dismissing motorist's appeal of summary judgment in prior suit was appropriate, and (b) the officer had probable cause to stop motorist's vehicle and arrest him.

 **8. Chatham v. Davis, No. 14-3318, 839 F.3d 679, October 17, 2016.**

**ISSUE:** Did the warden's failure to install emergency call buttons in the jail segregation unit constitute deliberate indifference to serious medical needs of the inmates?

**FACTS:**  Estate of state inmate who died after suffering an asthma attack brought action against prison warden, corporation contracted to run prison's healthcare unit, prison doctor, nurse, and several prison guards, alleging that defendants were deliberately indifferent to inmate's serious medical needs, violating his rights under the Eighth Amendment. The United States District Court granted summary judgment in favor of warden and corporation. Following trial on the remaining claims, jury found for the remaining defendants. Estate appealed.

**APPEAL:** The Court of Appeals held that: (a) the warden's failure to install emergency call buttons in segregation unit did not constitute deliberate indifference to serious medical needs of inmate; (b) the warden's failure to ensure that the position of permanent medical director of prison was filled in a timely fashion did not constitute deliberate indifference to serious medical needs of inmate; (c) the corporation was not liable under § 1983 for failure to fill permanent medical director position; (d) the corporation was not liable under § 1983 for failure to train nurse in protocols specific to asthma-related emergencies; (e) the district court did not abuse its discretion in denying estate's motion for leave to file third amended complaint; (f) the district court did not abuse its discretion in denying estate's motion for discovery sanction; and (g) the evidence of the inmate's arrest history was admissible.

**OCTOBER - 2016**

# CASE ANALYSIS

# **1. Ramos v. Hamblin, No. 15-3052 (7th Cir. 2016), 2016 WL 6156021, October 24, 2016.**

# **ISSUES:** Did this former prisoner offer evidence that supervisory officials knew of risk to former prisoner, and (b) Did this former prisoner offer evidence that prison's random assignment policy for cellmates constituted deliberate indifference.

# **FACTS:** Former state prisoner brought § 1983 action against supervisory prison officials, asserting Eighth Amendment deliberate indifference claim, based on allegations that prisoner was sexually assaulted by his cellmate. The United States District Court granted summary judgment to prison officials. Former prisoner appealed.

**APPEAL:** The Court of Appeals held that: (a) this former prisoner offered no evidence that supervisory officials knew of risk to former prisoner, and (b) this former prisoner offered no evidence that prison's random assignment policy for cellmates constituted deliberate indifference.

**2. Chatham v. Davis**, **No. 14-3318, (7th Cir. 2016), 2016 WL 6072331, October 17, 2016**

**ISSUE:** Did the warden's failure to install emergency call buttons in segregation unit constitute deliberate indifference to serious medical needs of inmate.

**FACTS:** Estate of state inmate who died after suffering an asthma attack brought action against prison warden, corporation contracted to run prison's healthcare unit, prison doctor, nurse, and several prison guards, alleging that defendants were deliberately indifferent to inmate's serious medical needs, violating his rights under the Eighth Amendment. The United States District Court granted summary judgment in favor of warden. Following trial on the remaining claims, jury found for the remaining defendants. Estate appealed.

**APPEAL:** The Court of Appeals held that the warden's failure to install emergency call buttons in segregation unit did not constitute deliberate indifference to serious medical needs of inmate.

# **3. Moore v. Liszewski, No. 14-3244 (7th Cir. 2016) 838 F.3d 877, September 23, 2016.**

# **ISSUE:** Was the award of $1 in nominal damages warranted, even if prisoner incurred no actual damages?

**FACTS:** State prisoner brought federal constitutional suit against correctional officer, seeking money damages for officer's alleged use of excessive force against him. The United States District Court entered judgment upon jury's verdict in favor of prisoner awarding only nominal damages. Prisoner appealed.

**APPEAL:** The Court of Appeals held that award of $1 in nominal damages was warranted, even if prisoner incurred no actual damages.

# **4. Williams v. Hansen, No. 15-2236 (7th Cir. 2016) 837 F.3d 809, September 20, 2016.**

# **ISSUE: Did the prison err by confiscating this prisoner’s copy of his victim’s death certificate?**

**FACTS:** State inmate convicted of murder filed § 1983 action alleging that prison officials violated his First Amendment rights when they confiscated his victim's death certificate. The United States District Court entered summary judgment in officials' favor, and inmate appealed.

**APPEAL:** The Court of Appeals held that: (a) this inmate plausibly pled that prison officials violated his protected First Amendment interest in receiving mail, and (b) the officials were not entitled to qualified immunity.

# **5. Davies v. Benbenek, No. 14-2558 (7th Cir. 2016), 836 F.3d 887, September 12, 2016**.

**ISSUES:** (a) Was the testimony that the suspect told the officers he had “sued before” “other-act evidence” that was used to prove suspect's character; (b) even if the testimony that the suspect told officers he had “sued before” was other-act evidence, it was admissible; (c) the probative value of the testimony that the suspect told the officers he had “sued before” was not substantially outweighed by the danger of unfair prejudice; (d) the testimony that certain items were found by the officers was not “other-act evidence”; and (e) the probative value of the testimony that certain items were found by the officers was not substantially outweighed by the danger of unfair prejudice.

**FACTS:** Suspect, who was paraplegic, brought § 1983 action alleging that city police officer who responded to call regarding domestic disturbance at his home used excessive force against him. Following jury trial in the United States District Court judgment was entered for officer. Suspect appealed.

**APPEAL:** The Court of Appeals held that: (a) the testimony that the suspect told the officers he had “sued before” was not “other-act evidence” that was used to prove suspect's character; (b) even if the testimony that the suspect told officers he had “sued before” was other-act evidence, it was admissible; (c) the probative value of the testimony that the suspect told the officers he had “sued before” was not substantially outweighed by the danger of unfair prejudice; (d) the testimony that certain items were found by the officers was not “other-act evidence”; and (e) the probative value of the testimony that certain items were found by the officers was not substantially outweighed by the danger of unfair prejudice.

**6. Rivera v. Gupta, No. 15-3462 (7th Cir. 2016) 836 F.3d 839, September 8, 2016.**

**ISSUES:** Was this administrator deliberately indifferent to inmate's need for substantial medical treatment?

**FACTS:** Federal inmate brought action against physician and prison health services administrator alleging deliberate indifference to his need for substantial medical treatment. The United States District Court entered summary judgment in defendants' favor, and inmate appealed.

**APPEAL:** The Court of Appeals held that: (a) this administrator was not deliberately indifferent to inmate's need for substantial medical treatment, and (b) summary judgment was not warranted on the inmate's claim against the physician.

**7. Bell v. City of Chicago, No. 15-2833 (7th Cir. 2016) 835 F.3d 736, August 30, 2016.**

**FACTS:** Vehicle owner and arrestee filed state court action alleging that city's impoundment-related ordinances violated Illinois law and were facially invalid under Fourth Amendment. After removal, the United States District Court dismissed the Fourth Amendment claim and remanded state law claim to state court. Plaintiffs appealed.

**APPEAL:** The Court of Appeals held that: (a) these ordinances were not facially invalid under the Fourth Amendment, and (b) the post-seizure procedures provided by the ordinances did not implicate the Fourth Amendment.

**FINDING #1:** Post-seizure procedures provided by city's impoundment-related ordinances did not implicate Fourth Amendment, even if they failed to provide neutral officer from judicial branch to determine whether probable cause existed to continue possessing vehicle after it was seized. **FINDING #2:** Post-seizure procedures provided by city's impoundment-related ordinances did not implicate Fourth Amendment, even if they failed to provide neutral officer from judicial branch to determine whether probable cause existed to continue possessing vehicle after it was seized.

**8. Anderson v. Morrison, No. 14-3781 (7th Cir. 2016), 835 F.3d 681, August 26, 2016.**

**FACTS:** State prisoner brought § 1983 action against prison guards, alleging violations of the Eighth Amendment after he slipped and fell while being ordered to walk handcuffed down stairs covered in milk and garbage. The United States District Court granted guards' motion to dismiss for failure to state a claim. Prisoner appealed.

**APPEAL:** The Court of Appeals held that allegations were sufficient to plead guards were deliberately indifferent to an unreasonable risk of serious damage to prisoner's future health.

**FINDING:** State prisoner's allegations were sufficient to plead guards were deliberately indifferent to an unreasonable risk of serious damage to prisoner's future health, as required to state a § 1983 claim for violations of the Eighth Amendment after prisoner slipped and fell down stairs; prisoner alleged that he was handcuffed behind his back and ordered to a holding area while his cell was searched, that he was ordered to walk down stairs unaided, that stairs were slippery with milk, and that stairs were clogged with several days' of food and rubbish.

**9. Kristofek v. Village of Orland Hills, No. 14-2919 (7th Cir. 2016), 832 F.3d 785, August 11, 2016.**

**FACTS:** Former part-time village police officer brought action against village and police chief, alleging First Amendment retaliation under § 1983 and various state law claims arising from his termination. The United States District Court dismissed the § 1983 claims, but the Seventh Circuit Court of Appeals reversed and remanded following officer's appeal. After remand, the District Court granted summary judgment to defendants on the § 1983 claims, and officer appealed again.

**APPEAL:** The Court of Appeals held that: (a) this officer was speaking as a private citizen when he communicated concerns about possible official misconduct to other officers and the FBI; (b) the officer's communications to other officers and the FBI were related to a matter of public concern; (c) the officer's free speech interest outweighed the police department's interest in promoting efficient public services; (d) the fact issues precluded summary judgment as to whether the officer's communications to the FBI caused his termination; (e) the chief was not entitled to qualified immunity; (f) the chief did not possess final decision making authority required to hold the village liable for his actions under § 1983.

**10. Janusz v. City of Chicago, No. 15-1330 (7th Cir. 2016), 832 F.3d 770, August 10, 2016.**

**FACTS:** Arrestee brought § 1983 action against city and police officers, alleging conspiracy, unlawful search of his residence and vehicle, false arrest and imprisonment, malicious prosecution, abuse of process, and intentional infliction of emotional distress. After the United States District Court granted in part defendants' motion for summary judgment, thereby limiting damages available, arrestee moved for reconsideration. The District Court denied the motion. Arrestee appealed.

**APPEAL:** The Court of Appeals held that: (a) the single-recovery rule barred this arrestee from recovering additional damages in a § 1983 suit, and (b) judicial estoppel barred the arrestee from arguing that the judgment in a state-court action was not fully satisfied by the settlement.

**11. Rosado v. Gonzalez, No. 15-3155 (7th Cir. 2016), 832 F.3d 714, August 10, 2016.**

**FACTS:** Arrestee brought § 1983 action against arresting police officers and city alleging false arrest, conspiracy to violate constitutional rights, failure to intervene, violation of his due process rights, and a state law respondeat superior claim. The United States District Court dismissed false arrest, conspiracy, and failure to intervene claims as barred by statute of limitations and dismissed due process and respondeat superior claims on the merits. Arrestee appealed dismissal of false arrest, conspiracy, and failure to intervene claims.

**APPEAL:** The Court of Appeals held that: (a) equitable estoppel did not apply to avoid the bar of the statute of limitations on this false arrest claim, and (b) equitable tolling under Illinois law did not apply to avoid the bar of the statute of limitations on this false arrest claim.

**12. Giddeon v. Flynn, No. 15-3464 (7th Cir. 2016), 830 F.3d 719, July 28, 2016.**

**FACTS:** Passenger brought § 1983 action against city and several of its police officers, alleging that officers violated his Fourth Amendment rights by unlawfully stopping a car in which he was a passenger and arresting him. The United States District Court granted summary judgment in favor of city and officers. Passenger appealed.

**APPEAL:** The Court of Appeals held that: (a) this police officer lacked probable cause to stop the car containing this passenger; (b) the police officer had probable cause to make a warrantless arrest of the passenger during the vehicle stop after recognizing him as suspect in a domestic-violence incident; and (c) the driver's consent to the officer's search of the car extended to a search of the shopping bag that contained the passenger's gun.

**13. Flournoy v. City of Chicago, No. 14-3776 (7th Cir. 2016), 829 F.3d 869, July 21, 2016.**

**FACTS:** Occupant of suspected drug dealer's apartment brought § 1983 action against police officers, alleging that officers used excessive force in executing search warrant at apartment. Following a jury trial, the United States District Court entered judgment in favor of officers and denied occupant's motion for new trial. Occupant appealed.

**APPEAL:** The Court of Appeals held that: (a) the evidence supported this jury's finding that the first police officer's failure to intervene to prevent the second officer's alleged use of excessive force did not violate the Fourth Amendment; (b) the evidence supported the jury's finding that the second police officer did not use excessive force when he deployed a flashbang grenade; (c) a handwritten notation that appeared on the police officer's typed police report and that indicated that two flashbang grenades were used was not admissible under the business-records exception to the hearsay rule; (d) the handwritten notation was not admissible under the hearsay rule's residual exception; and (e) the jury's note, which was submitted with a verdict and which stated that errors that were made by the police department as a whole could not fall on the officers' shoulders, did not affect the validity of verdict and thus did not warrant a new trial.

**14. White v. City of Chicago, No. 15-1280 (7th Cir. 2016), 829 F.3d 837, July 21, 2016.**

**FACTS:** brought § 1983 action against city and city police officer, alleging, inter alia, that officer sought warrant to arrest arrestee for narcotics offense without probable cause. The United States District Court granted city's motion to dismiss arrestee's Monell claim on the pleadings, and, 2015 WL 225395, granted defendants' motion for summary judgment on remaining claims. Arrestee appealed.

**APPEAL:** The Court of Appeals held that: (a) the officer provided the state court judge with a sufficient factual basis to support a warrant, and (b) the district court's error in applying a heightened pleading standard to the arrestee's Monell claim was harmless.

**15. Neita v. City of Chicago, No. 15-1404 (7th Cir. 2016),** **830 F.3d 494, July 19, 2016.**

**FACTS:** Arrestee brought § 1983 action against city and city officials, alleging that he was falsely arrested for animal cruelty and that officials conducted illegal searches in connection with animal cruelty charges. The United States District Court granted defendants' motion to dismiss for failure to state claim. Arrestee appealed.

**APPEAL:** The Court of Appeals held that: (a) this arrestee stated a § 1983 claim for false arrest; (b) this arrestee's claim in an amended complaint that the officers illegally searched his vehicle related back to the date of the arrestee's original pleading; and (c) the officers could not rely on an Illinois statute, which allowed the officers to conduct a warrantless search of non-residence after receiving a complaint of animal cruelty, as a basis for qualified immunity.

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**CASE ANALYSIS**

**1. Knowles v. Pfister**, **Docket Number:** 15-1703, July 13, 2016.

**FACTS:** The plaintiff, a prisoner and a Wiccan, was denied permission to wear a “pentacle medallion,”a five-pointed silver star set in a circle less than an inch in diameter. The pentacle medallion is to the Wiccan religion what the cross is to many Christians. Plaintiff’s medallion was small enough to comply with prison regulations regarding jewelry; the day after issuing him a jewelry retention permit, the prison confiscated the medallion. The plaintiff then brought this suit.

**Opinion Summary:** In plaintiff’s suit under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. 2000cc–1, the warden argued that the Illinois Department of Corrections prohibits inmates from possessing “five and six-point star symbols” because they are usable as gang identifiers. Without addressing the merits of the suit or the defense, the district judge denied a preliminary injunction. ***The Seventh Circuit reversed,*** reasoning that RLUIPA’s “substantial burden” inquiry asks whether the government has substantially burdened religious exercise, not whether the claimant is able to engage in other forms of religious exercise. The court noted that the plaintiff is willing to wear his medallion under his shirt whenever he’s outside his cell to protect himself from being identified as a gang member and had tendered an affidavit from another Wiccan prisoner, who attested that he has worn his medallion in maximum security prisons since 1998 without experiencing threats or attacks.

**3. Felton v. City of Chicago**, **Docket Number:** 14-3211, June 28, 2016

**FACTS:** Prisoner filed pro se § 1983 action against city and its police superintendent, for excessive force allegedly used by municipal police officers when arresting him. The United States District Court dismissed complaint as frivolous, and prisoner appealed.

**Opinion Summary:** Felton was in a car in Harvey, Illinois, when he was approached by an unmarked car with tinted windows. Felton, who was unarmed, claims that he feared for his life and fled onto the expressway, heading toward Chicago. Officers “chased” him, firing guns, then “ram[med]” their cars into his, causing him to crash. He states he was “shot by 6 different stu[n] guns,” “put into critical condition,” and suffered broken bones, bruises, a concussion, lost vision, and other injuries. He underwent several surgeries and suffered “excruciating pain and mental anguish.” He filed suit under 42 U.S.C. 1983. Because Felton was incarcerated at the time, the judge conducted an initial screening under, 28 U.S.C. 1915A, noting that the allegations were insufficient to state claims against the only named defendants: Chicago and its police superintendent (in his official capacity). The judge found it “painfully obvious” that Felton’s complaint “had omitted critical facts” and consulted newspaper accounts of Felton’s arrest. “Instead of expending further resources in recapping what those newspaper accounts reflected,” the judge attached them as exhibits to his order, dismissing the suit as “frivolous.” ***The Seventh Circuit reversed***, noting that at least one part of Felton’s complaint was legally viable: his allegation that he was shot by multiple stun guns.

**4. Ogurek v. Gabor**, **Docket Number:** 15-1151, June 27, 2016.

**FACTS: This i**nmate brought § 1983 action against prison security investigator, alleging retaliation in violation of his First Amendment rights. The United States District Court entered summary judgment for the investigator. The inmate appealed.

**Opinion Summary:** After a fight with another inmate, Ogurek required stitches and was charged with a disciplinary infraction. Ogurek says he told investigator Gabor that he wanted to charge the other inmate with starting the fight and that he wanted an investigation of the theft of property from his cell while he was in segregation after the fight. When 10 days elapsed with no response Ogurek complained to the warden. According to Ogurek, Gabor berated him for complaining and told him that, after watching a security video, he had determined that Ogurek had started the fight. Ogurek denied this. Gabor filed a disciplinary report for impeding an investigation, which led to Ogurek remaining in segregation for six months. An administrative appeal resulted in expungement, on grounds that Gabor had violated procedure and had failed to substantiate his charge. During discovery in his suit under 42 U.S.C. 1983, Ogurek sought the video. The district judge ordered Gabor to respond within 17 days, which he did not do. The judge dismissed the suit before the video surfaced. ***The Seventh Circuit reversed.*** An inmate’s complaint of being assaulted and injured by another inmate and then framed by a guard is not a “personal gripe,” that is unprotected by the First Amendment.

**5. Gray v. Hardy**, **Docket Number:** 13-3413, June 24, 2016.

**FACTS:** Illinois prisoner brought pro se § 1983 action against prison's warden, in his individual capacity, alleging that warden violated the Eighth Amendment by failing adequately to address, among other things, the infestation of vermin, insects, and birds in prisoner's cell. The United States District Court granted summary judgment to the warden, and the prisoner appealed.

**Opinion Summary:** Gray, an inmate at Illinois’s Stateville Correctional Center for 15 years, sued the warden under 42 U.S.C. 1983, alleging that the warden violated the Eighth Amendment by failing adequately to address the infestation of vermin, insects, and birds in Gray’s cell. He alleged that the prison cleans only infrequently and does not fix broken windows and holes in the walls. Gray suffers from asthma and claims that he had not had an attack for seven years before arriving at Stateville and that he now takes a prescription for attacks that occur about every two years. Gray claims that he has also suffered rashes and is given inadequate access to cleaning supplies. Gray has submitted unsuccessful grievances through the prison’s system. The district court granted summary judgment to the warden, finding that none of the conditions Gray described were so bad that they violated the Eighth Amendment. ***The Seventh Circuit reversed,*** holding that Gray’s individual claims were dismissed prematurely. On remand, the district court can decide how to coordinate the case with a pending class action involving similar allegations.

**6. Saathoff v. Davis**, **Docket Number:** 15-3415, June 20, 2016.

**FACTS:** Owners of family dog that was shot by police officer called to break up dog fight when family dog was attacked by stray pit bull brought § 1983 action against officer and city that employed him. After granting city's motion for summary judgment, the United States District Court entered judgment on jury verdict in favor of defendant officer and denied plaintiffs' motion for new trial. Plaintiffs appealed.

**Opinion Summary:** Plaintiff, walking her brown labrador retriever, “Dog,” encountered a gray and white pit bull running loose, which lunged at Dog’s neck. The dogs began to fight. Neighbors unsuccessfully tried to separate them. Plaintiff dropped Dog’s leash so that Dog could defend himself. Officer Davis, driving to a burglary call, received a report that a pit bull was attacking another dog at a corner along his route. Davis pulled over and trained his spotlight on the dogs. Plaintiff, who was crying, identified herself and described Dog. Davis has a form of colorblindness that makes it difficult for him to distinguish certain colors, but had not informed his employer of his condition. Davis shot at what he thought was the aggressor. The dogs separated. Dog limped toward plaintiff, who cried that Davis had shot her dog. Davis then aimed at the pit bull and fired several times. The pit bull left the scene. Dog died as a result of the gunshot wound. From the time Davis had arrived until the time he fired his seventh shot, about two minutes elapsed. ***The Seventh Circuit affirmed*** a verdict in favor of Davis in a suit under 42 U.S.C. 1983, alleging unconstitutional seizure of Dog. The court upheld a conclusion that Davis had not committed discovery violations and the court’s rejection of plaintiffs’ proffered Fourth Amendment reasonableness analysis jury instruction.

**7. Jackson v. City of Peoria**, **Docket Number:** 14-3701, June 3, 2016.

**FACTS:** Arrestee brought § 1983 action against police alleging he was arrested without probable cause, that police committed official misconduct, that his home was searched without a warrant, that his trial was unfair, and that he was mistreated in custody. The United States District Court granted summary judgment for the police and the arrestee appealed.

**Opinion Summary:** Heinz was the victim of a 2011 home invasion. One burglar entered, punched Heinz and locked him in a closet, then was joined by a second burglar. They stole Heinz’s possessions, including his car. Police arrested Jackson. After he was acquitted, Jackson sued the police under 42 U.S.C. 1983. The court granted the defendants summary judgment. ***The Seventh Circuit affirmed, stating that there was probable cause for the arrest.*** Heinz identified Jackson’s picture in a photo spread; Heinz’s neighbor identified Jackson as one of two people he saw loitering outside Heinz’s house near the time of the burglary. Jackson’s son told the police that his father had committed some burglaries recently. Jackson had no evidence for his claim that the photo spreads were conducted improperly. A search of Jackson’s home was authorized by a warrant. Jackson claimed that he was mistreated during this custody by being held incommunicado and without food for several days, but did not sue any of the guards. The court characterized Jackson’s claims as irresponsible and stated that his attorney “should count himself lucky that the appellees have not requested sanctions under Fed. R. App. P. 38.”

**8. Fonder v. Kankakee County**, **Docket Number:** 15-2905, May 26, 2016.

**FACTS:** Arrestees brought action against county sheriff, challenging written policy requiring strip search of every arrestee before that person entered general population at detention center, to extent that policy applied to persons whose custody had not yet been approved by a judge. Following certification of class, the United States District Court held that the policy was valid as applied to the class. The arrestees appealed.

**Opinion Summary:** The Kankakee County Sheriff has a written policy requiring a strip search of every arrestee before that person enters the detention center’s general population. The policy permits manual body-cavity inspections of some arrestees. Arrestees filed suit to contest the policy as applied to persons whose custody has not yet been approved by a judge. The district judge certified a class: “All persons held in the custody of the Sheriff of Kankakee County from April 20, 2010 to the date of entry of judgment who, following a warrantless arrest, were strip searched in advance of a judicial determination of probable cause,” but later dismissed, finding the policy valid as applied to the class, relying on the Supreme Court’s 2012 decision, Florence v. Burlington County. ***The Seventh Circuit vacated, reasoning that the written policy may be valid, while its application is not. The district judge implied that the class had forfeited its opportunity to contest how the policy works in practice, but when the suit began, and the definition was proposed, class counsel had no reason to think that the jail’s staff was doing something other than what the written policy required. Two members of the class contend that they were arrested, strip searched, and then immediately released.***

**9. Yahnke v. County of Kane**, **Docket Number:** 15-2162, May 24, 2016.

**FACTS:** Discharged county deputy sheriff brought § 1983 action against county and sheriff, alleging that he was terminated because of his political affiliation, in violation of First Amendment, and that termination occurred without due process. The United States District Court granted the defendants' motion for summary judgment and the deputy appealed.

**Opinion Summary:** Twenty-year-veteran Deputy Yahnke supported the Sheriff’s opponent in a 2006 election. The prior Sheriff had approved Yahnke’s request to work as the part-time Maple Park police chief. After the new Sheriff took office, Yahnke was injured while working as a Deputy Sheriff and began receiving disability benefits. The Sheriff advised Yahnke that his secondary employment was suspended until he could return to work in the Sheriff’s office. At a party, Yahnke openly discussed running for the Sheriff’s position in 2010. Based on the Sheriff’s inquiry, the Illinois Attorney General concluded that secondary employment presented a potential conflict of interest. The Sheriff initiated an investigation, which concluded that Yahnke continued to work for Maple Park while his secondary employment was suspended. The Sheriff notified Yahnke that he was seeking his removal for cause. After the Sheriff terminated Yahnke’s employment, Yahnke sued under 42 U.S.C. 1983. The court granted the defendants summary judgment. ***The Seventh Circuit affirmed as to the due process claim but vacated*** on the political affiliation count. A process existed for Yahnke to challenge his termination: a hearing before the Merit Commission or a grievance followed by arbitration. The finder of fact could conclude that the Sheriff rejected lesser sanctions in favor of termination because Yahnke expressed a desire to run against the Sheriff, which is enough to defeat summary judgment.

**10. Becker v. Effriechs, Docket Number:** 15-1363**,** May 12, 2016.

**FACTS:** Arrestee brought § 1983 action against police officer and city, alleging, inter alia, that officer used excessive force in violation of his Fourth Amendment rights when, after he had surrendered, officer pulled him down three steps and placed his knee on his back while allowing police dog to continue to bite him, resulting in severe and permanent injuries to his leg. Officer moved for summary judgment on the basis of qualified immunity. The United States District Court denied the motion in relevant part, and officer appealed.

**Opinion Summary:** Becker sued Evansville, Indiana police officer Elfreich under 42 U.S.C. 1983, alleging Elfreich used excessive force in arresting him because, after Becker had surrendered, Elfreich pulled him down three steps and placed his knee on his back while allowing a police dog to continue to bite him. Officers had arrived with an arrest warrant, which alleged that three weeks earlier Becker had held a knife to his brother-in-law’s neck and threatened to kill him. Elfreich claimed that he released the dog only after Becker failed to respond to warnings to come out of hiding and that the dog could not hear the release command because of screaming; he argued he was entitled to qualified immunity because his conduct did not constitute excessive force or, alternatively, that it did not violate clearly established constitutional law. ***The Seventh Circuit affirmed denial*** of Elfreich’s motion for summary judgment. A jury could reasonably find the force was excessive; it was clearly established at the time of Becker’s arrest that no more than minimal force was permissible to arrest a non-resisting, or passively resisting, suspect.

**11. Morgan v. City of Chicago,** **Docket Number:** 14-3307, May 6, 2016.

**FACTS:** Arrestee brought § 1983 action against police officers and city to recover for conspiracy to violate constitutional rights during course of arrest. The United States District Court entered judgment on a jury verdict for the officers and the other defendants and denied a new trial motion claiming discriminatory use of peremptory challenges. The arrestee appealed.

**Opinion Summary:** Officers noticed Morgan as he crossed the street and pursued him on suspicion that he was in possession of a firearm. They apprehended Morgan outside a house, using force that Morgan would later contend was excessive but that the officers would maintain was reasonable because he was resisting arrest. He was charged with resisting arrest and possession of a controlled substance based on a small bag of cocaine, which the officers claimed to have found near Morgan after his arrest. The state court dismissed the possession charge on the ground that there was not probable cause to prosecute, and the State’s Attorney dropped the charge for resisting arrest. Morgan sued the arresting officers under 42 U.S.C. 1983. A jury returned a verdict in favor of the defendants. ***The Seventh Circuit affirmed***, rejecting an argument that the defendants had violated the Equal Protection Clause by exercising their peremptory strikes on a racially discriminatory basis during jury selection and that the district court had committed multiple procedural and substantive errors.

**12. Cairel v. Alderden**, **Docket Number:** 14-1711, May 5, 2016.

**FACTS:** Two arrestees brought § 1983 action against police detectives, asserting due process claims based on allegations that one arrestee's confession to several robberies was fabricated, that other arrestee's confession was coerced, and that potential alibi witnesses were not disclosed, and arrestees also asserted state-law claims for malicious prosecution and intentional infliction of emotional distress. The United States District Court granted summary judgment to the detectives and the arrestees appealed.

**Opinion Summary:** Cairel and Johnson, lawfully repossessing cars, were stopped for a traffic violation. The officers, aware of recent robberies in the area, grew suspicious and called a victim to the scene. The victim identified Cairel and Johnson as the men who had robbed him the night before. The officers arrested them. During subsequent questioning, Cairel, who has a learning disability and low IQ, confessed to several robberies and implicated Johnson. Prosecutors filed charges. Johnson pled guilty in exchange for probation. Further investigation revealed that both men were innocent. A year later, prosecutors dismissed Cairel’s case and allowed Johnson to withdraw his plea. Neither man was imprisoned. They sued the detectives under 42 U.S.C. 1983 for allegedly fabricating Johnson’s confession, failing to disclose a potential alibi witness, and coercing Cairel’s confession. ***The Seventh Circuit affirmed summary judgment for defendants.*** Plaintiffs were not deprived of sufficient liberty to support their fabrication claim. There was no evidence that defendants concealed evidence unknown to plaintiffs supporting their alibi or that any failure to disclose caused a deprivation of liberty. No reasonable jury could find that Cairel’s interrogation “shocked the conscience” or that defendants’ conduct was so “extreme and outrageous” as to prove intentional infliction of emotional distress. Probable cause for the criminal charges defeated claims for malicious prosecution.

**13. Bolling v. Carter**, **Docket Number:** 15-2254, April 26, 2016.

**FACTS:** Pretrial detainee at county jail brought action against six correctional officers, alleging they manifested deliberate indifference to an acute medical need in violation of Fourteenth Amendment. The United States District Court entered summary judgment for officers. The detainee appealed.

**Opinion Summary:** Plaintiff, a pretrial detainee at Cook County Jail, fell and injured his back. It was a month before he was able to see a doctor. Correctional officers did not move him although the doctor determined that he needed to be in a lower bunk. There was no ladder to his upper bunk, so had to sleep on the floor until his term of confinement ended. He sued correctional officers, contending that they had manifested deliberate indifference to an acute medical need. The district judge granted the defendants summary judgment, stating only that “it is undisputed that Plaintiff never received a lower bunk permit at any time while at the jail.” ***The Seventh Circuit reversed in part, stating that it was disputed and he did receive an order from a doctor directing that he be assigned to a lower bunk.*** The defendants’ brief did not discuss the dispute and did not substantiate its denial.

**14. Kuttner v. Zaruba**, **Docket Number:** 14-3812, April 14, 2016.

**FACTS:** Female deputy brought action against county sheriff, alleging, inter alia, that sheriff terminated her because of her sex. The United States District Court granted in part sheriff's motion for summary judgment. The deputy appealed.

**Opinion Summary:** Kuttner began working as a DuPage County deputy sheriff in 1998. In an October 2009 complaint, Sheriff Zaruba asserted that, several months earlier, Kuttner, in uniform, visited the home of a person who owed money to her boyfriend. The debtor’s father had answered the door and told Kuttner that his son was not home. Kuttner left a business card listing her name and a company called “Team in Focus.” Kuttner stipulated to the facts and admitted to violating two rules: by “conduct unbecoming” an officer and improper wearing of the uniform. Other disciplinary charges were dropped. The Merit Commission determined that Kuttner’s conduct was serious enough to warrant discharge. The EEOC declined action. Kuttner sued, claiming sex discrimination (Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2) and alleging that Kuttner was fired and denied a promotion because of her sex and that the sheriff’s policies regarding jail staffing discriminated against female employees. Her lawyer sought the personnel files of more than 30 employees in an effort to find a “similarly situated” employee who was treated differently. The judge imposed limits. ***The Seventh Circuit affirmed those limits and summary judgment in favor of the defendants.***

**15. Tolliver v. City of Chicago**, **Docket Number:** 15-1924, April 12, 2016.

**FACTS:** Arrestee filed § 1983 action against arresting officers for excessive force and conspiracy to conceal use of excessive force, and against city for indemnification of officers. The United States District Court entered summary judgment in defendants' favor, and arrestee appealed.

**Opinion Summary:** In 2009, Tolliver agreed to deliver drugs for Tyson. Tolliver left Tyson's house with cocaine. A confidential informant had described Tolliver’s car and a drug packaging operation at Tyson’s house. Two officers, in plain clothes, stopped Tolliver, exited their unmarked car, and pointed a gun at Tolliver. According to Tolliver, he backed up about a car length. Tolliver, who was unarmed, then realized that he was dealing with police. He claims that he did not want the officer to think that he was reaching for a gun, so he sat motionless, with his hands on the steering wheel, and his foot on the brake. He claims that the officer shot him while he was in that position and that he became unable to control the car, which rolled toward the officers. The officers fired 14 times and Tolliver was struck by seven bullets. He pled guilty to aggravated battery of a peace officer and possession of a controlled substance with intent to deliver, but then sued for excessive force. ***The Seventh Circuit affirmed summary judgment in favor of the officers.*** A convicted criminal may not bring a civil suit questioning his conviction until the conviction has been set aside. Tolliver’s suit rests on a version of the event that completely negates the basis for his conviction.

**16. Doe v. Village of Deerfield**, **Docket Number:** 15-2069, April 12, 2016.

**FACTS:** Arrestee brought action against village and individuals whose false statements to police resulted in his arrest and prosecution, asserting an equal protection claim under § 1983 and a malicious prosecution claim under state law. The United States District Court entered an order dismissing the action, and arrestee appealed.

**Opinion Summary:** Two individuals made false statements to a Village of Deerfield police officer, which resulted in Doe’s arrest. The Village prosecuted Doe for ordinance violations. Although the Village became aware of the falsity of the statements during the prosecution, it nevertheless proceeded and refused to dismiss the charges. The criminal case “resolved in [Doe’s] favor,” and he obtained an order expunging his related arrest and prosecution records. Doe asserts that his arrest and prosecution were conducted in retaliation for his previous lawsuit against a Deerfield police officer. Doe filed an equal protection claim under 42 U.S.C. 1983 and a malicious prosecution claim under Illinois law. The defendants moved to dismiss, citing Doe’s failure to comply with FRCP 10(a) requiring him to provide his true name in his complaint’s caption. The court denied Doe’s motion to proceed anonymously, finding Doe did not show exceptional circumstances. Doe argued that having to reveal his true identity would thwart the purpose of the expungement of his criminal records and would embarrass him. ***The Seventh Circuit affirmed, first holding that an order denying leave to proceed anonymously falls within the collateral order doctrine and is immediately appealable, but Doe failed to show exceptional circumstances justifying anonymity.***

**17. Hall v. Jung**, **Docket Number:** 15-2102, April 12, 2016.

**FACTS:** Arrestee brought action against police officer in state court, alleging claims for excessive force and assault and battery. Officers removed action to federal court. Following jury trial, the United States District Court entered verdict in favor of the officer. The arrestee appealed.

**Opinion Summary:** Chicago Officer Jung, patrolling with his partner, approached “Maxwell Street Hot Dog Stand” and saw a woman run into traffic waving her hands, her face covered in blood. She stated that her husband had struck her and pointed toward Hall, to identify her husband. Jung parked, and walked toward Hall. Hall did not comply with Jung’s commands to “stop, put his hands behind his back, calm down, [and] stop screaming.” Jones grabbed Hall. who attempted to twist away; his momentum caused him to fall. After he was in handcuffs, Hall continued to resist and again fell to the ground. Hall did not complain of pain or indicate that his arm was injured. Hours later at the police station, Hall complained of pain; he was taken to the hospital, where doctors discovered his arm was fractured. The entire arrest was captured on video. Hall pleaded guilty to resisting arrest, but filed suit, claiming excessive force, assault, and battery. During discovery, the magistrate set a deadline for Hall to disclose his expert witness (FRCP 26(a)(2)). Hall failed to provide the expert’s report and did not respond to Jung’s motion to strike. The magistrate barred Hall from presenting the expert. ***The Seventh Circuit affirmed a verdict in Jung’s favor, rejecting challenges to evidentiary rulings because Hall failed to provide transcripts memorializing proceedings regarding three rulings. Hall’s fourth challenge did not warrant reversal.***

**18. Kevin Dixon v. Cook County, Illinois**, **Docket Number:** 13-3634, April 8, 2016.

**FACTS:** Mother of pretrial detainee, who died shortly after release from county jail, brought action against county and jail officials who oversaw detainee's care at jail's healthcare facility, asserting claims under § 1983, based on allegations that officials violated the Eighth Amendment and state law by being deliberately indifferent to detainee's medical needs. The United States District Court dismissed the action. Mother appealed.

**Opinion Summary:** In September 2008 Dixon was sent to the Cook County jail as a pretrial detainee. A month later, he developed severe and persistent pain in his back and abdomen. In December, he had a CT scan that revealed a paratracheal mass. Over the next few weeks, the mass grew rapidly. Medical personnel at the jail were aware of the problem, but accused Dixon of malingering, gave him over-the-counter analgesics, and ordered him to seek psychiatric care. By January 2009, Dixon’s condition had deteriorated severely. He was finally taken to Stroger Hospital, where he was diagnosed with lung cancer. He died two months later. Dixon’s mother sued Cook County and the doctor and nurse who had overseen Dixon’s care at the jail, asserting claims under 42 U.S.C. 1983 for deliberate indifference to Dixon’s serious medical condition in violation of the Eighth and Fourteenth Amendment, and state-law claims for intentional infliction of emotional distress. The district court dismissed the claims. ***The Seventh Circuit vacated.*** A reasonable jury could find that pervasive systemic deficiencies in the detention center’s health-care system were the moving force behind Dixon’s injury.

**19. Hill v. Snyder**, **Docket Number:** 15-2607, April 5, 2016.

**FACTS:** State prisoner brought § 1983 action in state court against prison staff, alleging violation of his Eighth Amendment rights via failure to protect him from inmates who threw feces at him on four occasions. Prison staff removed action to federal court. The United States District Court granted summary judgment for the prison staff and the prisoner appealed.

**Opinion Summary:** Hill, an Indiana inmate, sued prison staff under 42 U.S.C. 1983, alleging that they had violated the Eighth Amendment by failing to protect him from inmates who threw feces at him on four occasions in 2011-2012. The district court granted summary judgment for defendants on the ground that Hill had not exhausted administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. 1997e(a). Hill claimed that prison staff had prevented him from filing formal grievances. For the first two incidents, they had improperly refused to process grievance forms. For the third and fourth incidents, they prevented him from filing formal grievances. His counselor refused to give him a grievance form after the third incident, and after the fourth incident, defendant Snyder demanded to know its exact time. Hill is now time-barred by the prison’s grievance policy from further pursuing administrative remedies. ***The Seventh Circuit concluded that summary judgment was improper for three of the incidents.*** Evidence of refusals to give Hill an available form was sufficient to permit a finding that Hill was prevented from grieving these incidents. The administrative remedies were not available to him. He was not required to hunt for a form from others.

**20. Anthony J. Peraica v. Village of McCook**, **Docket Number:** 15-3131, April 5, 2016.

**FACTS:** Political candidate, who was arrested three days before election for allegedly tampering with a campaign sign, brought action against village and various law enforcement officials, alleging that they arrested and detained him because of his political affiliations in violation of the First and Fourteenth Amendments. The United States District Court granted the defendants' motion for judgment on the pleadings, and the candidate appealed.

**Opinion Summary:** District court's order granting village's and law enforcement officials' motion for judgment on the pleadings in § 1983 action by political candidate, who was arrested three days before election for allegedly tampering with a campaign sign, was not premature; no special order was required to close the pleadings, district court's entry of judgment itself concluded any argument, and district court relied on determinations made in candidate's prior state-court criminal case. Political candidate's prior conviction in state court for criminal damage to property precluded him from alleging in instant § 1983 action that his lawful campaign activity, as opposed to unlawful sign destruction, was at least a motivating factor in police officers' decision to arrest him three days before election, for purposes of establishing causation element on his First Amendment retaliation claim, since state court made factual determinations that were identical to factual issues at stake in instant action. The rulings of the district court were affirmed. ***The Seventh Circuit affirmed the judgments of the District Court.***

**APRIL - 2016**

**CASE ANALYSIS**

**1. Tracy Williams, v. Brandon Brooks, et al., No. 15–1763, 809 F.3d 936, Jan. 5, 2016**.

**ISSUE: Did the police in this case illegally detain and arrest this suspect and use improper force in doing so?**

**FACTS:** Arrestee brought § 1983 action against police officers, asserting Fourth Amendment claims for unlawful traffic stop and arrest, excessive force, and failure to protect. The United States District Court granted officers' motion for summary judgment. Arrestee appealed.

**APPEAL:** The Court of Appeals held that: (a) this motorist did not create a fact issue regarding probable cause for traffic stop; (b) this arrest was supported by probable cause; (c) the use of force during this arrest was reasonable; and (d) the state court's dismissal of the charge against the arrestee for resisting law enforcement was irrelevant.

**2. Mitchell Alicea, v. Aubrey Thomas, Alejandro Alvarez and the City of Hammond, No. 15–1255, 815 F.3d 283, March 1, 2016.**

**ISSUE: Could these Officers be held liable for their use of force when arresting this Burglary suspect?**

**FACTS:** Burglary suspect brought action against police officers and city under § 1983, alleging that officers used excessive force to arrest him in violation of the Fourth Amendment. The United States District Court granted defendants' motion for summary judgment, and denied suspect's motion for reconsideration, Suspect appealed.

**APPEAL:** The Court of Appeals held that: (a) the first officer's alleged actions in commanding dog to attack compliant suspect were unreasonable; (b) the facts issue precluded summary judgment as to whether second officer's use of force was unreasonable; (c) the officers' alleged actions violated suspect's clearly established rights; and (d) the fact issues precluded summary judgment as to whether officers were entitled to qualified immunity.

**3. Louis A. Bianchi, et al., v. Thomas K. McQueen, et al., No. 14–1635, 2016 WL 1213270, March 29, 2016.**

**ISSUE: Could this Special Prosecutor and his investigators be held liable for their conduct during the investigation and trial of the plaintiffs in this case?**

**FACTS:** State's attorney and colleagues brought § 1983 action against court-appointed assistant special prosecutor and investigators to recover for violations of due process clause, First Amendment, and Fourth Amendment in connection with prosecution for official misconduct. The United States District Court granted motion to dismiss based on absolute and qualified immunity. State's attorney and colleagues appealed.

**APPEAL:** The Court of Appeals held that: (a) this prosecutor enjoyed absolute immunity for claims premised on alleged presentation of false statements to grand jury and at trial, but not for alleged investigative conduct; (b) the alleged fabrication of evidence did not violate due process since the state's attorney and his colleagues were acquitted; (c) the alleged failure to disclose material exculpatory evidence did not prejudice the state's attorney and his colleagues; (d) the complaint did not state a First Amendment claim of political retaliation; and (e) the prosecutor and his investigators were entitled to qualified immunity on malicious prosecution claim.

**JANUARY – 2016**

 **1. Paul Burritt v. Lisa Ditlefsen, et al., No. 15–1896, 807 F.3d 239, Nov. 30, 2015.**

**Background:** Arrestee, who was falsely accused of sexual assault, brought § 1983 action against investigator for county sheriff's department and county, alleging false arrest and false imprisonment in violation of his Fourth and Fourteenth Amendment rights and state common law claims for false imprisonment, malicious prosecution, negligence, and defamation. The District Court granted summary judgment in favor of investigator and county. Arrestee appealed.

**Holdings:** The Court of Appeals held that: (a) arrestee consented to investigator's warrantless entry into his home. Arrestee, who was accused of sexually assaulting 11-year old girl while transporting her for medical purposes, consented to investigator's warrantless entry into his home, and thus entry did not infringe on arrestee's Fourth Amendment rights, where investigator told arrestee that she was there to get GPS unit from arrestee's van, arrestee invited the investigator into his home, and arrestee assisted the investigator by providing her with the GPS unit. (b) the investigator had arguable probable cause to arrest, and thus was entitled to qualified immunity on § 1983 false arrest and false imprisonment claims. Investigator for county sheriff's department had arguable probable cause to arrest suspect for allegedly sexually assaulting 11-year old girl while transporting her for medical purposes, and thus investigator was entitled to qualified immunity on suspect's § 1983 false arrest and false imprisonment claims, where girl repeated detailed story to different individuals, there was no indication that she was lying or suggestible, trip from counseling services to her home took two hours when it should have taken 40 minutes, and county attorney independently determined that probable cause existed and instructed investigator to make the arrest. (c) the County Sheriff, rather than county attorney, had final policymaking authority, and thus county was not liable in § 1983 action for county attorney's decision to direct warrantless arrest of arrestee. County sheriff, rather than county attorney, had final policymaking authority, and thus county was not liable in § 1983 action for county attorney's decision to direct warrantless arrest of suspect for sexual assault, absent evidence that county sheriff was personally involved in determination to arrest. (d) the district court did not abuse its discretion in declining to exercise supplemental jurisdiction over arrestee's state law claims.

 **2. Anthony Zimmerman, et al., v. Jeffrey DORAN, et al., No. 15–1242, 807 F.3d 178, Nov. 24, 2015.**

**Background:** Logger brought § 1983 action against county sheriff's officers, based on allegations of false arrest in violation of the Fourth Amendment and deprivation of property without Due Process in violation of the Fourteenth Amendment.

**Holdings:** The Court of Appeals held that: (a) the officers were entitled to qualified immunity on logger's false arrest claim. County sheriff's officers who arrested logger, who possessed deed to timber on owner's property, for trespassing on owner's property in violation of Illinois criminal trespass statute, were entitled to qualified immunity in logger's § 1983 false arrest claim, since it was not clearly established, at time of arrest, that an individual with a timber deed in Illinois cannot commit criminal trespass. 720 ILCS 5/21–3 (a).(b) officers' act of arresting logger did not shock the conscience in violation of the Fourteenth Amendment. County sheriff's officers' act of arresting logger, who possessed deed to timber on owner's property, for trespassing on owner's property in violation of Illinois criminal trespass statute, was not arbitrary conduct unjustifiable by any government interest, as required to support logger's § 1983 claim that officers' actions shocked the conscience in violation of due process, where officers gave logger repeated warnings that property owner wanted logger to leave his property and that he would be arrested for trespass if he refused to do so, and logger decided to nevertheless remain on the property.



 **3. Renee D. Gustafson v. William Adkins, No. 15–1055, 803 F.3d 883, Oct. 16, 2015.**

**Background:** Female police officer for police and security service at Veterans Affairs (VA) hospital brought *Bivens* action against service's chief and detective, alleging an unconstitutional search in violation of the Fourth Amendment arising from the installation of covert video surveillance equipment in office used by female officers as a changing area.

**Holdings:** The Court of Appeals held that: (a) the installation of covert video surveillance equipment was not a “personnel action” covered by the Civil Services Reform Act (CSRA), and thus, the CSRA did not preclude officer's *Bivens* claim; Installation of covert video surveillance equipment in office used as changing area by female police officers for police and security services at Veterans Affairs (VA) hospital was not a “personnel action” covered by the Civil Service Reform Act (CSRA), and thus, the CSRA did not preclude officer's *Bivens* claim for alleged Fourth Amendment violation against detective who installed equipment; although detective alleged that the purpose of the camera was to catch officers sleeping on duty or deter them from doing so, detective and his supervisor did not secure proper authorization for their purported investigation of officers sleeping in the office, and installed hidden surveillance equipment. (b) Federal Employees' Compensation Act (FECA) did not bar *Bivens* claim; Even if installation of covert video surveillance equipment in office used as changing area by female police officers for police and security services at Veterans Affairs (VA) hospital was a “personnel action” covered by the Civil Service Reform Act (CSRA), detective's installation of equipment was “criminal and outrageous” conduct such that the Court of Appeals could adjudicate officer's *Bivens* claim against detective for alleged Fourth Amendment violation; detective installed equipment at the direction of his supervisor despite knowing that doing so was illegal. (c) constitutional right of employees to be free from unreasonable employer searches was clearly established at the time that detective installed surveillance equipment, and thus, detective was not entitled to qualified immunity; Constitutional right of employees to be free from unreasonable employer searches was clearly established at the time that detective for police and security services at Veterans Affairs (VA) hospital installed covert video surveillance equipment in office used as changing area by female police officers, and thus, detective was not entitled to qualified immunity in officer's action alleging unconstitutional search in violation of Fourth



 **4. George H. Dawson v. Michael Brown, Springfield Illinois Police Department, No. 15–1517, 803 F.3d 829, Oct. 7, 2015.**

**Background:** Arrestee's father brought action § 1983 action against police department and officers, alleging excessive force, assault and battery, failure to intervene, and conspiracy to interfere with his civil rights in violation of the Fourth Amendment.

**Holding:** The Court of Appeals held that officers' alleged conduct in kicking and tackling father did not amount to excessive force. One police officer's alleged conduct in kicking arrestee's father, combined with second officer's alleged conduct in tackling father immediately thereafter, did not amount to excessive force in violation of the Fourth Amendment, where father had approached to within three or four feet of officers while they were attempting to subdue arrestee, who was physically resisting arrest and believed to be dangerous.

**OCTOBER - 2015**

**1. Smith v. Dart, et al., No. 14–1169, 2015 WL 5656844, Sept. 25, 2015.**

***FACTS:*** Pretrial detainee brought action under § 1983 against county alleging deliberate indifference to detainee health in violation of the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment, as well as failure to pay adequate wages under the Fair Labor Standards Act (FLSA) for job in jail's laundry room. The county moved to dismiss. The District Court granted the motion and the defendant appealed.

***FINDING #1:*** Pretrial detainee sufficiently alleged that the food he received was “well below nutritional value,” as required to state claim under § 1983 for deliberate indifference to detainee health in violation of the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment. ***FINDING #2:*** Pest infestations may form the basis of a claim under § 1983 for conditions of confinement that amount to deliberate indifference to detainee health in violation of the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment. ***FINDING #3:*** Pretrial detainee failed to allege harm stemming from presence of spider nests, cockroaches, and mice, and thus failed to state a claim under § 1983 for deliberate indifference to detainee health in violation of the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment. ***FINDING #4:*** Pretrial detainee's mere assertion that he could not “go outside for recreation” was insufficient to allege that he was deprived of the opportunity to exercise, and thus failed to state a claim under § 1983 for deliberate indifference to detainee health in violation of the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment. ***FINDING #5:*** Pretrial detainee's claims, when accepted as true, that prison water contained cyanide, lead, and “alpha and beta radiation” were sufficient to allege deprivation of drinkable water, as required to state claim under § 1983 for deliberate indifference to detainee health in violation of the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment. ***FINDING #6:*** Pretrial detainee who elected to participate in veteran's program within county jail that included job in jail's laundry room did so voluntarily, and thus job was not “involuntary servitude” or punishment that would violate Thirteenth Amendment.

**2. Cook v. O'Neill and Baldwin, No. 14–1641, 2015 WL 5568622, Sept. 23, 2015.**

***FACTS:*** Arrestee filed § 1983 action against sheriff's department detectives alleging violation of his Fourth Amendment rights. The United States District Court entered summary judgment in detectives' favor, and arrestee appealed.

***FINDING #1:*** Witness's summary judgment affidavit in arrestee's § 1983 action was amplification rather than contradiction of her prior trial testimony at arrestee's criminal trial, and thus was not within sham exclusionary rule, where witness testified at trial that she had let officers into her apartment, and affidavit stated that when she had testified that she “let them in” she had meant that she “did not tell them to leave or did not object directly to them, but let them remain.” ***FINDING #2:*** Officers' decision to hold open door to witness's apartment so that they could see into living room while she was getting dressed elsewhere fell within scope of exigent circumstances exception to Fourth Amendment's warrant requirement, where evidence obtained by officers indicated that there was some connection between witness and robbery suspect, officers had come to apartment to ask witness about suspect's whereabouts, and witness had told officers that there was someone else in her apartment. ***FINDING #3:*** Officers' warrantless entry into apartment to arrest robbery suspect fell within scope of exigent circumstances exception to Fourth Amendment's warrant requirement, where, once officers saw suspect, they knew he was wanted in connection with robbery that they were investigating, and it would have been possible for suspect to have jumped out of apartment window and fled if officers had waited. ***FINDING #4:*** Officers' warrantless entry into third party's apartment to arrest suspect did not harm suspect, and thus could not be basis for officers' being liable to suspect for any Fourth Amendment violation under § 1983, since suspect was subject of outstanding arrest warrant, which officers became aware of after they entered apartment, arrested suspect, and conducted warrant check, and since there was no possible entitlement to damages, given that officers had probable cause to make arrest, sight of officers could not have caused emotional distress to a suspect who had recently committed a violent robbery, and existence of arrest warrant precluded nominal or punitive damages.

**3. Reyes, v. Dart, et al., No.** 14–3441, **2015 WL 5448951, Sept. 16, 2015.**

***FACTS:*** Pretrial detainee, proceeding pro se, brought action against sheriff and two other jail officials, alleging failure to protect him from attack by other prisoners. The District Court granted defendants' motion to dismiss for failing to prosecute. Detainee appealed.

***FINDING:*** Pretrial detainee, who was proceeding pro se, refusing to sign release in demand for access to all of detainee's medical records since birth by sheriff and two other jail officials was not a failure to comply with rules of procedure or a court order, and therefore, dismissal for failure to prosecute was not warranted of detainee's action alleging failure to protect him from attack by other prisoners; detainee was prosecuting his suit by challenging demand for unlimited access to and use of his medical records, dispute over release was a discovery dispute, defendants should have filed motion to compel or motion to submit to physical examination, and release permitted detainee to revoke his authorization at any time.



**4. Kingsley v. Hendrickson, et al., No. 12–3639, 2015 WL 5210679, Sept. 8, 2015.**

***FACTS:*** Pretrial detainee brought § 1983 action against county jail officers, alleging, inter alia, that they used excessive force against him in violation of his Fourteenth Amendment rights. The District Court entered an order denying the officers' motion for summary judgment on detainee's excessive force claim, and subsequently entered judgment on a jury verdict in officers' favor. Detainee appealed. The Court of Appeals affirmed. Certiorari was granted. The Supreme Court, vacated and remanded.

***FINDING:*** A reasonable officer would have been on notice that detainee was not resisting officers in manner that justified slamming his head into wall and using stun gun while he was manacled, and thus alleged use of stun gun on non-resisting detainee, lying prone and handcuffed behind his back, violated detainee's clearly established right to be free from excessive force in violation of his Fourteenth Amendment rights, as would preclude qualified immunity defense by county jail officers in detainee's § 1983 action.

**5. White v. Bukowski, et al., No. 14–3185, 800 F.3d 392, Sept. 1, 2015.**

***FACTS:*** Pregnant county prisoner brought civil rights action under § 1983 against county sheriff's office, alleging violation of her Eighth Amendment right for the alleged deliberate indifference to her need for proper prenatal care and prompt transport to a hospital for delivery of her baby while she was in their temporary custody. County moved to dismiss. The District Court granted the motion. The prisoner appealed.

***APPEAL:*** The Court of Appeals held that no administrative remedies were available, and thus prisoner did not fail to exhaust administrative remedies.

**6. Pendell v. City of Peoria, et al., No. 14–2158, 799 F.3d 916, Aug. 26, 2015.**

***FACTS:*** Plaintiff filed § 1983 action alleging that city employees conducted illegal search and seizure of items from her yard. The District Court dismissed the complaint, and the plaintiff appealed.

***APPEAL:*** The Court of Appeals held that district court did not abuse its discretion in dismissing action with prejudice as discovery sanction.

**7. Stinson v. Gauger, Johnson, and Rawson, Nos. 13–3343, 13–3346, 13–3347, 799 F.3d 833, Aug. 26, 2015.**

***FACTS:*** Former prisoner who was convicted for murder that he did not commit and spent 23 years in prison, brought § 1983 action against detective and forensic odontologists who investigated the murder and testified at trial, alleging fabricated testimony and suppression of the fabrication. The District Court denied the detective's and odontologists' motion seeking absolute and qualified immunity. The detective and odontologists then appealed.

***APPEAL:*** The Court of Appeals held that: (a) the odontologists were not entitled to absolute immunity on the fabrication claim; (b) the odontologists were entitled to qualified immunity on the fabrication claim; (c) the detective and the odontologists were entitled to qualified immunity on the suppression of evidence claims.



**8. Gevas v. McLaughlin, et al., No.** 13–1057, **798 F.3d 475, Aug. 20, 2015.**

***FACTS:*** Prisoner, proceeding pro se, brought § 1983 action against prison officials, alleging violations of the Eighth Amendment in failing to protect him from attack by his cellmate. The District Court granted the defendants' motion for judgment as a matter of law. The prisoner appealed.

***APPEAL:*** The Court of Appeals held that: (a) the issue of whether prison officials had actual knowledge that inmate was in danger of being harmed by his cellmate was for jury, and (b) the officials were not entitled to qualified immunity.



**9. Diaz v. Davidson, et al., No.** 14**–**1952, **799 F.3d 722, Aug. 20, 2015.**

***FACTS:*** Former state inmate filed action alleging that prison officials' denial of adequate exercise violated Eighth Amendment's prohibition against cruel and unusual punishment. The District Court entered judgment in the officials' favor, and the inmate appealed.

***APPEAL:*** The Court of Appeals held that the officials' failure to provide the inmate with a hat and gloves to wear when he exercised in his outdoor cell did not violate the Eighth Amendment.

**10. Rowe v. Gibson, et al., No.** 14–3316**, 798 F.3d 622, Aug. 19, 2015.**

***FACTS:*** Prisoner brought § 1983 claims against prison administrators and employees of a prison medical services company, claiming that defendants were deliberately indifferent to his serious medical needs by preventing prisoner from having access to heartburn medication before he ate meals, and by denying prisoner access to prescribed, rather than over-the-counter, heartburn medication for 33 days, in violation of the Eighth Amendment. The District Court granted summary judgment to the defendants. The prisoner appealed.

***APPEAL:*** The Court of Appeals held that: (a) the issue of fact as to whether restricting the time a prisoner took heartburn medication departed from professional practice and precluded summary judgment on an Eighth Amendment deliberate indifference claim, and (b) the issue of fact whether the prison medical staff told the prisoner that they were withholding the prisoner's heartburn medication to convince the prisoner not to file lawsuits precluded summary judgment on the prisoner's First Amendment retaliation claim.

**11. Hart v. Mannina, et al., No.** 14**–**1347, **798 F.3d 578, Aug. 17, 2015.**

***FACTS:*** After dismissal of the charges against him, arrestee, who had been arrested following murder investigation that was filmed as part of reality television program and subsequently spent nearly two years in jail pending trial, brought state-court action against city and several police officers, asserting claims for false arrest and imprisonment, malicious prosecution, making false or misleading statements in support of a probable cause affidavit, and denial of speedy trial rights. Following removal, defendants moved for summary judgment. The District Court granted motion, and arrestee appealed.

***APPEAL:*** The Court of Appeals held that: (a) the police had probable cause to arrest plaintiff; (b) no reasonable trier of fact could have found on this record that lead detective's probable cause affidavit was false or misleading; and (c) the plaintiff's right to a speedy trial was not violated.



**12. Seneca Adams and Tari Adams v. City of Chicago, et al., No.** 14**–**2862, **798 F.3d 539, Aug. 14, 2015.**

***FACTS:*** Following parties' stipulation as to city's liability in two arrestees' civil rights action, alleging false arrest, excessive force, equal protection, and malicious prosecution, the city filed a motion for remittitur, regarding the jury's award of compensatory damages of $2.4 million to one arrestee and $1 million to another arrestee, for past and future physical, mental, and emotional pain and suffering. The District Court granted the motion and the arrestees appealed.

***APPEAL:*** The Court of Appeals held that: (a) the Court of Appeals had jurisdiction to review this remittitur order, and (b) the jury awards in this case were not excessive.



**13. Estate of William E. Williams, et al., v. Indiana State Police Department, et al., Nos.** 14**–**2523**, 14–2808, 797 F.3d 468, Aug. 13, 2015.**

***FACTS:*** Estate of suicidal individual shot and killed when law enforcement officers attempted to subdue him brought § 1983 action against officers, alleging violations of the Fourth Amendment. The District Court entered summary judgment in the officers' favor. The Estate appealed. In separate action, the mother, individually and on behalf of estate of the suicidal individual shot and killed by the officers brought a § 1983 action against the officers, alleging violations of the Fourth Amendment. The District Court denied the officers' motion for summary judgment. The Officers appealed. The cases were consolidated.

***APPEAL:*** The Court of Appeals held that: (a) the officers were entitled to qualified immunity for use of deadly force against suicidal individual who advanced on them, brandishing knife; (b) the officers were entitled to qualified immunity for decision to open bathroom door and to use stun guns to attempt to subdue suicidal individual; and (c) the officer was not entitled to qualified immunity for use of deadly force against suicidal individual who had not posed threat of violence towards officers or anyone else.



**14. Charles S. Howlett v. Jeffrey Hack, et al., No.** 14**–**1351, **794 F.3d 721, July 21, 2015.**

***FACTS:*** After arrestee was acquitted of offenses relating to alleged break-in and battery at neighbor's house, arrestee brought action against arresting officer, city, neighbor, and others, asserting claims under § 1983 and state law for false arrest and malicious prosecution. The District Court granted summary judgment to the defendants. The arrestee appealed.

***APPEAL:*** The Court of Appeals held that: (a) the officer had probable cause for the arrest; (b) the Indiana Tort Claims Act shielded city and police officer from malicious prosecution claim; (c) the officer was not liable under § 1983 for malicious prosecution; and (d) an adequate state-law remedy precluded § 1983 malicious prosecution claim.



**15. Jimmy Hinkle v. Rick White and Thomas Oliverio, No.** 14**–**2254, **793 F.3d 764, July 16, 2015.**

***FACTS:*** Plaintiff brought § 1983 action against state police investigator, and investigator's supervisor, relating to investigator's allegedly defamatory statements that plaintiff had molested his stepdaughter and that plaintiff had burned down his own house. The United States District Court granted summary judgment in favor of defendants. Plaintiff appealed.

***APPEAL:*** The Court of Appeals held that this plaintiff was not deprived of a protected due process liberty interest in his occupation.



**16. Dzevad Hurem v. Nickolas Tavares, et al., No.** 14**–**1269, **793 F.3d 742, July 14, 2015.**

***FACTS:*** Occupant of apartment, who was arrested for criminal trespass to real property despite his contention that he was legally renting the apartment, brought state court action against city, police officers, and the owners of the apartment for wrongful eviction and various civil rights violations. After removal, and after the owners and city were dismissed, the District Court granted officers' motion for summary judgment. The occupant appealed.

***APPEAL:*** The Court of Appeals held that: (a) the officers had probable cause to arrest occupant, and (b) the officers' failure to adhere to the Illinois' Forcible Entry and Detainer Act did not affect reasonableness of the arrest.

**17. Earl Sidney Davis v. Seth C. Wessel and George Lay, No.** 13–3416, **792 F.3d 793, July 7, 201**5.

**FACTS:** Civil detainee brought pro se action under § 1983 against security guards employed at civil detention facility for sexually violent persons operated by Illinois Department of Human Services alleging violation of rights under the Due Process Clause of the Fourteenth Amendment. The District Court entered judgment on jury verdict in favor of detainee. The security guards appealed.

**APPEAL:** The Court of Appeals held that: (a) a detainee alleging excessive use of restraint must prove knowing or reckless behavior; (b) the issue of whether guards intended to humiliate detainee was for the jury; and (c) the guards were not entitled to qualified immunity.

**JULY - 2015**

**ANALYSIS**

**1. Did the police violate this individual’s rights by failing to investigate an alleged assault?**

**Rossi v. City of Chicago, --- F.3d ----, 2015 WL 3827324 (C.A.7 (Ill.)), June 22, 2015**

***FACTS:*** Joseph Rossi was assaulted by several persons, one of whom was an off-duty Chicago police officer. Glenn Mathews, a detective with the Chicago Police Department, was assigned to investigate. For six weeks, Mathews did practically no work on the case; he followed zero leads, did not inspect the crime scene, and questioned no witnesses other than Rossi. Aside from taking some messages and filing perfunctory reports, he exerted no discernible effort. He then closed his investigation. Rossi sued Mathews under 42 U.S.C. § 1983 alleging that he violated his constitutional right to judicial access because his failure to investigate led to the spoilage of evidence in his civil suit against the assailants. He also brought a Monell suit against the City of Chicago for perpetuating a “code of silence” that shields police officers from investigation and promotes misconduct by police. The district court granted summary judgment for the defendants on the grounds that Rossi was not denied judicial access because the police did not conceal from him any facts which prevented him from obtaining legal redress from his assailants. The court also dismissed Rossi's Monell claims for lack of evidence of widespread practices on the part of the police department.

***APPEAL:*** The Court of Appeals held that: (a) the detective's alleged failure to investigate assault did not deny alleged victim constitutional right to judicial access; (b) the deposition testimony of a police lieutenant was insufficient to demonstrate widespread practice of inappropriate relationships by police; (c) the district court did not abuse its discretion in declining to consider expert reports; (d) anecdotal evidence was insufficient to establish widespread practice, by city police department, of failure to discipline and train police officers regarding ethical conduct; and (e) the district court acted within its discretion in awarding costs to city.

**2. Did two police officer violate this police sergeant’s rights by taking him to a mental health center against his will?**

**Mucha v. Jackson, 786 F. 3d 1064, May 27, 2015**

***FACTS:*** The plaintiff (a police sergeant) charged two police officers (a captain and a lieutenant) with having detained him without a warrant or other justification, in violation of the Fourth Amendment as made applicable to state action by interpretation of the Fourteenth Amendment and in turn to acts of individual state officers by 42 U.S .C. § 1983. There are other defendants and other charges, but the only issue presented by this appeal is whether the officers are entitled to qualified immunity.

***APPEAL:*** The Court of Appeals held that the officers did not violate any clearly established law and thus were entitled to qualified immunity from sergeant's action.

**3. Was this police officer entitled to dismissal of this civil rights action against him after he shot an allegedly suicidal individual?**

**Weinmann v. McClone, 787 F. 3d 444, C.A.7 (Wis.), May 27, 2015**

***FACTS:*** After an argument with his wife on their wedding anniversary, Jerome Weinmann went to his garage, drank half a bottle of vodka, and put the barrel of a shotgun in his mouth. But he was unable to pull the trigger. Susan Weinmann, in the meantime, had called 911 for help. She got more than she bargained for: the officer who responded to her call shot Jerome four times. Jerome survived and sued the Officer for using unconstitutionally excessive force. The Officer invoked qualified immunity, but the district court refused to grant summary judgment in his favor on that basis.

***FINDING #1:*** Genuine issue of material fact existed as to whether police officer reasonably believed his life was in danger, precluding summary judgment on issue of qualified immunity in a § 1983 action by victim of police shooting, alleging excessive force in violation of the Fourth Amendment. ***FINDING #2:*** Right of victim of police shooting to not be shot unless police officer believed victim posed a threat to the officer or someone else was clearly established at time victim was shot by officer, and therefore, officer was not entitled to qualified immunity in victim's § 1983 action alleging excessive force in violation of the Fourth Amendment.

**4. Did the trial court properly dismiss this former police officer’s action against his previous employer violating his equal protection rights and for malicious prosecution?**

**Wade v. Collier, 783 F. 3d 1081, C.A.7 (Ill.), April 17, 2015**

***FACTS:*** Arian Wade, a former police officer for the Village of Maywood, was prosecuted in Illinois state court for criminal drug conspiracy. After a jury acquitted him, he sued three other Maywood police officers and the Village alleging violations of his federal equal protection rights and asserting a state law claim for malicious prosecution. The district court granted summary judgment and Wade appeals.

***FINDING #1:*** Under Illinois law, probable cause existed to arrest a police officer for criminal drug conspiracy, thus precluding the officer's malicious prosecution claim against a village and three other police officers, where several other police officers, an investigator for the state attorney's officer, and an assistant state attorney testified at a grand jury hearing that an announcement was made at a roll call immediately before the police officer called to warn a drug dealer of outside law enforcement agency operation, there had been extensive contacts between the police officer and the drug dealer, and, in a recorded conversation, the police officer told the drug dealer that he could not help with the arrest of one of the dealer's associates as he did not know the arresting officers. ***FINDING #2:*** A police officer who was unsuccessfully prosecuted for criminal drug conspiracy failed to identify other comparable or similar officers who provided information to drug dealers, and were treated more favorably than the officer, as required to support the officer's class-of-one equal protection claim against village under § 1983; officers who participated in the undercover operation that resulted in the officer's arrest were not similarly situated, as they were working hand-in-hand with the State's Attorney's Office, and another officer that allegedly provided information to a drug dealer was uncovered during a broad criminal investigation to discover the identity of the corrupt cops.

**5. Was a police officer liable for failing to protect a victim after the officer received a 911 call?**

### **Doe v. Village of Arlington Heights, 782 F. 3d 911, C.A.7 (Ill.), April 13, 2015**

### ***FACTS:*** Jane Doe sued police a police officer and his employer, the Village of Arlington Heights (“Arlington Heights” or the “Village”), alleging claims arising out of the Officer's response to a 911 call when he encountered Doe and three males in an apparently intoxicated state. The Officer left Doe with the males and she was then sexually assaulted. The district court dismissed all claims, denied leave to amend the complaint, and denied Doe's motion to alter or amend its judgment.

***APPEAL:*** The Court of Appeals held that: (a) this officer was entitled to qualified from immunity; (b) the officer was not liable for violating the plaintiff's due process rights pursuant to a state-created danger theory; (c) the officer did not violate the plaintiff's equal protection rights; (d) the Illinois Tort Immunity Act barred the plaintiff's tort claims against the village and the officer; and (e) the Act barred the plaintiff's negligent hiring claim against the village.

**APRIL - 2015**

**ANALYSIS**

**1. Rashad B. Swanigan v. City of Chicago, No. 12–1261, January 9, 2015**

**FACTS:** Rashad Swanigan was arrested and jailed for more than 50 hours by Chicago police officers who mistakenly thought he was a serial bank robber known as the Hard Hat Bandit. Following his release, Swanigan filed suit against a number of individual officers and the City alleging various constitutional violations under 42 U.S.C. § 1983 and several state-law claims. After some procedural maneuvering, Swanigan's Monell policy-or-practice claim against the City became a separate lawsuit, which was consolidated before the same judge and stayed while the suit against the individual officers proceeded. A jury found for Swanigan against seven individual officers on one of the constitutional claims, awarding $60,000 in damages. Swanigan then turned his attention back to the *Monell* suit. He moved to lift the stay and advised the court that he intended to amend his complaint in light of the jury's verdict. The judge interpreted the motion as a waiver of all but two of Swanigan's theories of *Monell* liability and held that the two remaining aspects of the claim were not justiciable. This ruling was based on the City's promise to indemnify its officers in the first suit and to pay nominal damages of $1 for any *Monell* liability. The judge also held—sua sponte—that one of the two *Monell* claims failed to state a claim on which relief could be granted. For these reasons, the judge denied Swanigan's motion to lift the stay and dismissed the *Monell* suit in its entirety. Swanigan appealed. City's proposed “Certification of Entry of Judgment” in arrestee's § 1983 action, promising to indemnify its police officers and to pay nominal damages of $1 for any *Monell* liability, was not offer of judgment, and did not moot arrestee's *Monell* claim for damages; certification was not styled as such an offer, and it did not satisfy arrestee's demands for full range of remedies.

**FINDING #1:** After arrestee had obtained jury verdict against police officers in action under § 1983 and municipality had promised to indemnify officers and pay nominal damages of $1 for any *Monell* liability, the district court could not prevent the arrestee in a related action against the municipality that had been stayed from then pursuing potentially viable *Monell* claims that sought additional equitable relief or were distinct from claims against police officers. **FINDING #2:** Because the city did not file a responsive pleading or a motion to dismiss the arrestee's § 1983 action, the 21-day period for the arrestee to amend his pleading as a matter of course was not triggered, and the arrestee retained his right to amend his complaint.

**2. Alan Beaman, v. Tim Freesmeyer, et al., No. 14–1195, January 13, 2015**

**FACTS:** In 1995, Alan Beaman was convicted of the murder of his ex-girlfriend, Jennifer Lockmiller. Thirteen years later, the Illinois Supreme Court overturned his conviction, finding that the state violated his due process rights under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), for failure to disclose material information about a viable alternative suspect. After release from prison, Beaman filed a 42 U.S.C. § 1983 lawsuit against the police officers and prosecutors involved in the investigation of the Lockmiller murder and his prosecution. He alleged that the defendants deliberately conspired to suppress materially exculpatory evidence during the pendency of his criminal case in violation of Brady. Although several defendants were dismissed for various reasons, the remaining defendants—Tim Freesmeyer, Dave Warner, and Frank Zayas, three former police officers in the Normal Police Department, as well as their former employer, the Town of Normal, Illinois—filed a motion for summary judgment on all counts. The motion was granted. On appeal, Beaman argues that the defendants should not have been granted summary judgment, but we disagree. Summary judgment was proper because Beaman did not present enough evidence from which a reasonable jury could infer the existence of a conspiracy to conceal the Brady material. One piece of evidence—the report on alternative suspect Stacey Gates's polygraph test—was not Brady material and its non-disclosure could not form the basis of a complaint. As to the other Brady material—the report on alternative suspect John Murray's polygraph test—which the defendants did not turn over to the prosecution, the defendants were entitled to qualified immunity. Therefore, we affirm the district court's decision.

**APPEAL:** The Court of Appeals held that: (a) the officers' failure to turn polygraph report over to prosecutors or defense counsel did not violate *Brady*; (b) the officers were entitled to qualified immunity; and (c) the officers and prosecutors did not engage in unlawful conspiracy.

**3. Falyn Bruce v. Derek Guernsey, et al., No. 14–1352, January 26, 2015**

**FACTS:** After Falyn Bruce's high-school boyfriend told a school official that Bruce had attempted to kill herself, the official contacted local authorities. A police officer, Justin Harris, went to the home where Bruce was staying and detained her until a county sheriff's deputy, Derek Guernsey, arrived on the scene. Guernsey then took Bruce against her will to a local hospital where she was subjected to a mental health examination. At the time they took these steps, Harris and Guernsey had only a report of Bruce's alleged suicidal ideation; they took no account of contradictory information, including her father's statements and her calm demeanor. Bruce filed this lawsuit under 42 U.S.C. § 1983, alleging that Harris and Guernsey's actions constituted an unreasonable seizure in violation of the Fourth Amendment, as applied to the states. The district court held that probable cause for the seizure was apparent on the face of Bruce's complaint. It also found that Guernsey had arguable probable cause and thus was entitled to qualified immunity. Bruce has appealed; we now affirm the district court's judgment in favor of Harris but reverse and remand for further proceedings as to Guernsey. After Falyn Bruce's high-school boyfriend told a school official that Bruce had attempted to kill herself, the official contacted local authorities. A police officer, Justin Harris, went to the home where Bruce was staying and detained her until a county sheriff's deputy, Derek Guernsey, arrived on the scene. Guernsey then took Bruce against her will to a local hospital where she was subjected to a mental health examination. At the time they took these steps, Harris and Guernsey had only a report of Bruce's alleged suicidal ideation; they took no account of contradictory information, including her father's statements and her calm demeanor. Bruce filed this lawsuit under 42 U.S.C. § 1983, alleging that Harris and Guernsey's actions constituted an unreasonable seizure in violation of the Fourth Amendment, as applied to the states. The district court held that probable cause for the seizure was apparent on the face of Bruce's complaint. It also found that Guernsey had arguable probable cause and thus was entitled to qualified immunity. Bruce has appealed; we now affirm the district court's judgment in favor of Harris but reverse and remand for further proceedings as to Guernsey.

**APPEAL:** The Court of Appeals held that: (a) the officer did not violate this minor's Fourth Amendment rights; (b) the minor stated a plausible claim against deputy; and (c) dismissal on qualified immunity grounds was not warranted.

**4. Brent Vinson, et al., v. Vermilion County, Illinois, et al., No. 12–3790, January 27, 2015**

**FACTS:** Brandy Vinson, her husband Brent, and their two minor children, C .R.V. and C.A.V., sued several law enforcement officers and two local governments for conducting an illegal search of their home and attached garage in violation of the Fourth Amendment. They also asserted a state law claim for trespass. The district court dismissed part of the complaint for failure to state a claim and granted judgment on the pleadings for the remainder. We reverse and remand.

**APPEAL:** The Court of Appeals held that: (a) these homeowners did not plead themselves out of court by establishing an impenetrable defense, but instead they stated a Fourth Amendment claim; and (b) their newly filed complaint after severance of their claims from those of related plaintiffs was not time-barred.

**5. Omar Saunders-El, v. Eric Rohde, et al., No. 14–1570, January 30, 2015**

**FACTS:** Subsequent to his acquittal by a jury on burglary charges, Omar Saunders–El sued members of the Rockford, Illinois police department, alleging that they planted his blood at the crime scene in an attempt to frame him. His complaint included a 42 U.S.C. § 1983 claim—contending that by fabricating evidence, the officers offended his due process rights—and Illinois state law claims for malicious prosecution and intentional infliction of emotional distress.

**APPEAL:** The Court of Appeals held that: (a) this acquittee's due process rights were not violated by officers' alleged fabrication of evidence against him, and (b) the officers' failure to disclose their alleged fabrication of evidence did not violate *Brady*.

**6. William N. Gerhartz, v. David Richert and Bill Tyson, Nos. 13–3079, 14–1041, March 5, 2015**

**FACTS:** William Gerhartz brought this action under 42 U.S.C. § 1983 against Deputy David Richert and Sergeant Bill Tyson, two officers of the Calumet County Sheriff's Department. He alleged that the officers had violated his Fourth Amendment rights by ordering that his blood be drawn, for evidentiary purposes, without a warrant. The district court granted summary judgment for the officers. It determined that the natural dissipation of alcohol from Mr. Gerhartz's bloodstream was an exigent circumstance sufficient to justify the officers' warrantless blood draw. Mr. Gerhartz later filed a Rule 59(e) motion to alter and amend the judgment, which the district court denied. Mr. Gerhartz now appeals both the district court's grant of summary judgment as well as its denial of his Rule 59(e) motion. For the reasons set forth in the following opinion, we affirm the judgment of the district court.

**APPEAL:** The Court of Appeals held that: (a) this arrestee did not waive issue of whether exigent circumstances justified the drawing of his blood for evidentiary purposes, and (b) the officers were entitled to qualified immunity.

**7. Eugene Bailey, v. City of Chicago, et al., No. 13–3670, March 6, 2015**

**FACTS:** Eugene Bailey was detained for 23 days while police investigated his role in a schoolyard brawl that resulted in the death of another student. The charges against him were ultimately dropped after the investigation revealed that five other persons, but not Bailey, were involved in the fight. Following his release, Bailey sued the City of Chicago and two police officers for malicious prosecution, intentional infliction of emotional distress (IIED), and violations of his civil rights under 42 U.S.C. § 1983. The district court granted summary judgment for the defendants on each of the claims, and Bailey appealed.

**APPEAL:** The Court of Appeals held that: (a) the officers had probable cause to arrest arrestee; (b) there was no evidence that delay of less than 48 hours before arrestee's probable cause hearing was imposed for improper motivations, and thus, the detention was not excessive or unreasonable; (c) the district court did not abuse its discretion in exercising supplemental jurisdiction over arrestee's state law claims for malicious prosecution and IIED, even though district court dismissed his federal claim; and (d) there was no evidence of extreme or outrageous conduct by defendants, as required to support IIED under Illinois law.

**8. Marshall King, v. Robert McCarty, et al., No. 13–1769, Decided: March 27, 2015**

**FACTS:** Marshall King, the plaintiff in this civil rights lawsuit, complains that he was forced to wear a see-through jumpsuit that exposed his genitals and buttocks while he was transported from a county jail to state prison. He contends that this amounted to an unjustified and humiliating strip-search that violated his rights under the Fourth and Eighth Amendments to the federal Constitution. The district court reviewed King's complaint as required by the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915A. The court determined that King had not stated a viable claim under the Eighth Amendment for cruel and unusual punishment but allowed him to proceed on his Fourth Amendment theory of an unreasonable search. The district court later granted summary judgment for the defendants on the Fourth Amendment claim on the ground that King had failed to comply with the Prison Litigation Reform Act's requirement that he exhaust the jail's available administrative remedies before suing. See 42 U.S.C. § 1997e(a). King has appealed.

**APPEAL:** The Court of Appeals held that: (a) the prisoner was required to direct his grievance to the jail, not the state prison, in order to satisfy Prison Litigation Reform Act's (PLRA) exhaustion requirement; (b) the jail's grievance procedure was not “available,” within meaning of PLRA; (c) the allegations were sufficient to state a claim under Eighth Amendment; and (d) the jail's requirement that prisoner wear transparent jumpsuit did not violate Fourth Amendment.

**JANUARY - 2015**

**ANALYSIS**

**1) Matz v. Klotka, No. 12–1674,** 769 F.3d 517, C.A.7 (Wis.), October 06, 2014

**FACTS:** Arrestee brought § 1983 action against current and former police officers, alleging they violated his Fourth and Fifth Amendment rights by arresting him without reasonable suspicion or probable cause, failing to make prompt probable cause determination once he was under arrest, and continuing to question him after he invoked his right to remain silent. Defendants moved for summary judgment. The District Court granted motion. Arrestee appealed.

**APPEAL:** The Court of Appeals held that: (a) the police officers had objectively reasonable suspicion of criminal activity justifying *Terry* stop; (b) the police officers did not exceed scope of permissible *Terry* stop by drawing weapons and handcuffing arrestee; (c) the police officers had no damages liability to arrestee under § 1983 for use of unsworn statements in arrest report presented to county commissioner to supply necessary probable cause for arrest; and (d) the arrestee's recovery of damages under § 1983 for allegedly coerced confession in violation of Fifth Amendment was precluded by his subsequent guilty plea and sentence.

**2) SWISHER v. PORTER COUNTY SHERIFF'S DEPARTMENT, et al., No. 13–3602,** **769 F.3d 553, Oct. 15, 2014.**

**FACTS:** State inmate brought § 1983 action against sheriff and jail personnel, alleging that he was denied medical care while in jail. The District Court, dismissed, and inmate appealed.

**APPEAL:** The Court of Appeals held that jail officials invited inmate's noncompliance with grievance procedures.

**3) WHEELER v. TALBOT, No. 13–3294, 770 F.3d 550, Oct. 20, 2014.**

**FACTS:** State inmate filed § 1983 action against prison's medical director alleging deliberate indifference to his serious medical needs. The District Court denied inmate's motion for temporary restraining order and preliminary injunction, and inmate appealed.

**APPEAL:** The Court of Appeals held that: (a) district court's order was immediately appealable, and (b) the inmate would not experience irreparable harm without preliminary injunction.

**4) ROLLINS v. WILLETT, et al., No. 14–2115, 770 F. 3d 575, Oct. 21, 2014.**

**FACTS:** This is an appeal from a judgment in favor of police officers, the chief of police, and the mayor of the Village of Glenwood, Illinois. They are the defendants in a suit brought by Rodney Rollins charging an unlawful seizure. Rollins had driven into the parking lot of an Aldi's grocery store and gotten out of his car when a police officer emerged from a police car that had pulled up behind him and ordered him to get back into his car and show the officer his driver's license, registration, and proof of insurance. He refused to cooperate with the officer, as well as with two other officers who later arrived at the scene, was arrested, and two months later pleaded guilty to driving on a suspended or revoked license. He then brought this suit, charging that the police had no basis for ordering him back into his car, and that their doing so constituted an unreasonable seizure of him. The district court dismissed the suit on the authority of *Heck v. Humphrey,* 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), which held that a civil rights suit can't be brought if a judgment in favor of the plaintiff would imply that his conviction in a prior proceeding had been invalid. Or as explained in a later Supreme Court decision, “civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments. Congress ... has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement, and that specific determination must override the general terms of § 1983.” *Wallace v. Kato,* 549 U.S. 384, 392, 127 S.Ct. 1091, 166 L.Ed.2d 973 (2007) (citations and internal quotation marks omitted). So suppose a defendant convicted of possessing illegal drugs found on his person sued the officer who had found the drugs, alleging that the officer planted them. If he won the suit, it would imply the invalidity of his drug conviction. The suit would therefore be barred by the rule of *Heck v. Humphrey.* See, e.g., *Okoro v. Callaghan,* 324 F.3d 488 (7th Cir.2003).

**APPEAL:** The Court of Appeals held that arrestee's action was not precluded pursuant to *Heck v. Humphrey* doctrine.

**5) WELTON v. ANDERSON, et al., No. 13–3336, 770 F.3d 670, Oct. 28, 2014.**

**FACTS:** Marshall Welton (“Welton”) sued police officer Shani Anderson, the National Bank of Indianapolis, and George Keely (collectively the “Appellees”) claiming that they engaged in a malicious prosecution against him in violation of the Fourth and Fourteenth Amendments and Indiana state law. Appellees moved to dismiss Welton's federal claims pursuant to Federal Rule of Civil Procedure 12(b)(6). The district court granted Appellees' motion and, after declining to exercise supplemental jurisdiction over Welton's remaining state law claims, dismissed the suit. Welton challenges this ruling on appeal, asserting his claims were improperly dismissed. For the reasons that follow, we affirm the district court's dismissal.

**APPEAL:** The Court of Appeals held that: (a) the officer's alleged false statements did not violate due process, and (b) the Fourth Amendment malicious prosecution claim was necessarily foreclosed.

**6) MORDI v. ZEIGLER, et al., No. 13–3188, 770 F.3d 1161, Oct. 29, 2014.**

**FACTS:** A foreign national brought a civil rights action against three state police officers, alleging that officers violated his right to consular notification of his arrest and detention under the Vienna Convention on Consular Relations (VCCR). The District Court denied the officers' motion for summary judgment based upon qualified immunity. The Officers filed this interlocutory appeal. Although the United States has been a party to the Vienna Convention on Consular Relations (Convention) since December 24, 1969, see *Treaties in Force,* U.S. Dep't of State (Jan. 1, 2013), http:// www. state. gov/ s/ l/ treaty/ tif/ index. htm (all websites last accessed Oct. 29, 2014), questions about its obligations under the Convention continue to arise. The Convention comprehensively regulates consular activities. For the most part, it operates at the diplomatic level, but Article 36 of the Convention refers to the rights of a person from one State (the “sending” State) who finds himself arrested or detained in another State (the “receiving” State). In particular, the Convention requires the authorities of the receiving State to inform the foreign national of his right under Article 36 to have his own consular officials alerted to his arrest or detention. In the case before us, plaintiff Uche Phillip Mordi asserts that three Illinois state police officers (the Officers) failed to comply with this obligation, and he has sued them for damages. After the district court denied the Officers' motion for summary judgment, based in part on an assertion that they were entitled to qualified immunity, they brought this interlocutory appeal. We reject the Officers' broader arguments on appeal, but we agree with them that the specific legal principle on which this case turns was not clearly established, and so we reverse.

**APPEAL:** The Court of Appeals held that a foreign national's right to consular notification at time of his arrest and interview at police station was not clearly established at time of its alleged violation.

**7) WINSTON v. O'BRIEN, et al., Nos. 13–3553 & 14–1371, 2014 WL 6057367, Nov. 14, 2014.**

**FACTS:** After arrestee obtained a favorable jury verdict on a civil rights excessive force claim, with an award of nominal compensatory damages and $7500 in punitive damages, he moved for attorney fees. The District Court granted the motion. Seeking to collect on such award, arrestee petitioned for indemnification and motion for writ of execution against city. The District Court granted a reduced fee award of $187,467. City appealed.

**APPEAL:** The Court of Appeals held that provision in Illinois' Tort Immunity Act governing a public entity's payment of attorney fees and costs awarded against one of its employees was permissive, not mandatory.

**8) BROWN v. CITY OF CHICAGO, et al., No. 13–2020, 771 F.3d 413, Nov. 13, 2014.**

**FACTS:** A former police officer filed action against city, its police board, and board members alleging that he was terminated on racial grounds and in retaliation for his earlier complaining about discrimination retaliation for complaining about harassment, in violation of § 1981, and that decision to fire him violated state law and due process. The District Court dismissed claims, and officer appealed.

**APPEAL:** The Court of Appeals held that: (a) the employee's voluntary dismissal of his state court action precluded, under doctrine of res judicata, his subsequent federal court action, and (b) the officer's claim that board violated due process was sufficient to invoke district court's federal question jurisdiction.

**9) MOORE, et al., v. BURGE, et al., No. 13–3301, 771 F.3d 444, Nov. 13, 2014.**

**APPEAL:** Multiple persons interrogated by the infamous Jon Burge and other officers he trained or influenced seek damages in this suit. Between 1972 and 1991, while employed by Chicago's police force, Burge regularly tortured people to extract statements. After the statute of limitations for prosecuting Burge about that misconduct expired, he was convicted of lying about his practices. Our plaintiffs—Melvin Jones (who died early this year; his estate has been substituted), Alnoraindus Burton, Aubree Dungey, James Freeman, and Sherrod Tillis—all contend that Burge or his henchmen physically abused them during interrogations. The District Court dismissed the claims as untimely. The Arrestees appealed.

**APPEAL:** The Court of Appeals held that: (a) the *Heck v. Humphrey* bar on conviction-impugning civil actions precluded relief unless and until convictions were set aside; (b) each alleged episode of torture was a completed wrong carrying its own limitations period; and (c) the arrestees were not entitled to equitable tolling.

**10) ESTATE OF BROWN v. THOMAS and Brown County, No. 14–1867, 771 F.3d 1001, Nov. 13, 2014.**

**FACTS:** Adam Brown, age 22, was at home with two friends in his ground-floor apartment in Green Bay, Wisconsin at 6:20 p.m. on a December evening, when there was a sudden knocking on his door and a yell of “police, search warrant!” As the police began to force open the front door when no occupant opened it, Brown ran upstairs to his bedroom and grabbed an unloaded shotgun that he kept there. Police followed. As they reached the top of the stairs they saw him standing in a corner of the bedroom pointing the shotgun at them. One of the officers, defendant Secor, shot Brown dead with an automatic rifle. Brown’s estate brought civil rights claims against the county and the officers involved, claiming that the use of seven officers to conduct a night-time raid was unreasonable and violative of the Fourth Amendment. The county and officers moved for summary judgment. The District Court granted the motion. The Estate appealed.

**APPEAL:** The Court of Appeals held that: (a) this undercover officer could not be liable for following orders in conducting search; (b) the officer was entitled to qualified immunity; (c) an expert report severely criticizing the county's search policy was inadmissible; and (d) there was no evidence to support *Monell* claim against the county.

**11) MORJAL v. CITY OF CHICAGO, et al., No. 14–1365, 2014 WL 7210834, Dec. 19, 2014.**

**FACTS:** Arrestee filed § 1983 petition against city and police officers, alleging claims for unlawful search and seizure, excessive force, conspiracy, false imprisonment, assault and malicious prosecution. Following acceptance of offer of judgment, arrestee sought attorney fees. The District Court entered an award of $17,205.50 in attorneys' fees, and subsequently granted an additional $2,000 to the arrestee for time spent litigating the amount of fees due to him in his fee petition. The City appealed the additional fee award.

**APPEAL:** The Court of Appeals held that district court had authority under § 1988 to award fees to arrestee for time spent litigating amount of fees due to him.

**October - 2014**

**1. Armato v. Grounds,** --- F.3d ----, 2014 WL 4370672, C.A.7 (Ill.), September 04, 2014

**ISSUE:** Did Illinois Department of Corrections (IDOC) employees violate this inmate’s rights under Eighth and Fourteenth Amendments by allowing him to be held beyond term of his incarceration, and also asserting claim for false imprisonment under state law.

***FACTS*:** A former inmate brought § 1983 action against Illinois Department of Corrections (IDOC) employees, alleging that employees violated his rights under Eighth and Fourteenth Amendments by allowing him to be held beyond term of his incarceration, and also asserting claim for false imprisonment under state law. The District Court granted summary judgment to employees and the former inmate appealed.

***APPEAL*:** The Court of Appeals held that: (a) under Illinois law, an inmate's release date was the date specified in a handwritten agreed order; (b) the IDOC employees were not deliberately indifferent in delaying the inmate's release because they believed that mandatory supervised release (MSR), which would require an approved host location for electronic monitoring before release of a sex offender, was required; and (c) the inmate's procedural due process rights were not violated.

**2. Olendzki v. Rossi,** 765 F.3d 742, 38 IER Cases 1757, Aug. 29, 2014

**ISSUE:** Did his superiors violate this public employee’s first amendment rights by retaliate against him for his union activities?

***FACTS*:** This employee is a psychologist at an Illinois state prison. After he was elected to his union's Executive Board, the employee began to advocate on behalf of his fellow union members and to voice his concerns to the management staff at the prison. He argued that this advocacy led to hostile relationships with his superiors and caused them to retaliate against him. So the employee sued six of his superiors claiming that they retaliated against him for his union advocacy; a violation of his First Amendment rights. The defendants moved for summary judgment and the district court granted their motion.

***APPEAL*:** The Court of Appeals held that: (a) this employee's statements, as union representative during another employee's disciplinary meeting, were not protected by First Amendment; (b) this employee failed to establish that his statements during labor management meetings involved matters of public concern; and (c) this employee's complaints about collective bargaining agreement, work conditions, and labor decisions were not entitled to First Amendment protection.

**3. Petkus v. Richland County, Wis.,** 2014 WL 4073075 (C.A.7 (Wis.)) Aug. 19, 2014

**ISSUE:** Did this Sheriff’s Department conduct an illegal search of the suspect’s properly and were they liable for the great damage that resulted?

***APPEAL*:** The Court of Appeals held that: (a) this search was unreasonable, in violation of property owner's Fourth Amendment rights, and conducted negligently, in violation of State law; (b) the damages award of $193,480 was properly reduced to $133,480; (c) the county forfeited governmental immunity defense; and (d) the State’s $50,000 statutory damages cap for unlawful acts, other than intentional torts, committed by government agencies or their employees, did not apply.

**4. Graber v. Clarke,** 763 F. 3d 888, Aug. 18, 2014

**ISSUE:** Were this former deputy’s First Amendment rights violated when he was punished for his comments about the Sheriff’s Office?

***FACTS*:** A former Deputy Sheriff filed suit against the Sheriff and the County alleging three violations of his federal and state rights. In Counts I and II, the deputy argued the defendants violated his federal First Amendment rights to free speech and association; Count III maintained that the defendants violated the State Law Enforcement Officer's Bill of Rights. Following a bench trial, the district court dismissed the action with prejudice.

***APPEAL*:** The Court of Appeals held that: (a) the deputy's discussion with incident commander and sergeant regarding order assigning deputies to mandatory overtime was protected by First Amendment; (b) the deputy's statements to deputy inspector regarding mandatory overtime were not protected by First Amendment; (c) the deputy's suspension for signing of deficient memo book was not motivated by his protected comments; and (d) the sheriff's hostile meeting with deputy did not violate First Amendment.

**5. McDowell v. Village of Lansing,** 763 F. 3d 762, Aug. 18, 2014

**ISSUE:** Was this Officer liable for the injuries suffered by a suspect in his custody?

***FACTS*:** The plaintiff appealed the summary judgment dismissal of his suit against the Village of Lansing and an Officer, in which he alleged, *inter alia,* that the Officer violated his substantive due process rights by rendering him vulnerable to a blow to the face by a third party.

***APPEAL*:** The Court of Appeals held that: (a) the officer's alleged actions did not rise to the level of egregious conduct necessary, pursuant to the state-created danger doctrine, to violate the substantive guarantees of the Fourteenth Amendment, and (b) the officer's actions did not show indifference or willful and wanton conduct, as required for plaintiff to prevail on his state-law claims.

**6. Hahn v. Walsh,** 762 F. 3d 617, Aug. 12, 2014

**ISSUE:** Was this police agency liable for the death of a detainee in their custody?

***FACTS*:** A pretrial detainee at a jail died as a result of diabetic ketoacidosis. The detainee's husband brought this action, alleging that various government officials and private contractors failed to provide adequate medical treatment, in violation of the detainee's rights under the Fourteenth Amendment, the Americans with Disabilities Act, the Rehabilitation Act and Illinois state law. The district court dismissed some of the plaintiffs' claims and granted summary judgment in favor of the defendants on the remaining claims.

***ARGUMENT*:** The plaintiffs appealed, raising three issues. First, the plaintiffs complained that the district court erred in dismissing their state law wrongful death claim. The district court faulted the plaintiffs for failing to comply with an Illinois statute that requires plaintiffs who allege medical malpractice to submit with their complaints (1) an affidavit confirming that a medical professional has verified the claim's merit and (2) a written report from that medical professional. Second, the plaintiffs argued that the district court abused its discretion by dismissing their wrongful death claim with prejudice instead of granting them leave to amend in order to cure the deficiency. Finally, they maintained that the district court erred in granting summary judgment to two of the defendants.

***APPEAL*:** The Court of Appeals held that: (a) the Illinois statute requiring that medical malpractice claims be accompanied by an affidavit confirming the claims' merits applied in diversity actions; (b) the district court abused its discretion in dismissing with prejudice the estate's wrongful death claim; (c) the sheriff was not deliberately indifferent to the detainee's serious medical needs; and (d) the contractor was not deliberately indifferent to detainee's medical needs.

**7. Seiser v. City of Chicago,** 762 F. 3d 647, Aug. 12, 2014

**ISSUE:** Were the police authorities liable for the arrest and prosecution of this police officer and for their order requiring the Officer to undergo a Breathalyzer test?

***FACTS*:** A police officer was arrested and subjected to a breathalyzer examination after several witnesses reported seeing him drinking from an alcoholic beverage container while driving his personal vehicle. After the breathalyzer detected no alcohol in his bloodstream, he was cited for driving a motor vehicle with an open container of alcohol in the passenger compartment. That charge was dropped after testing of the contents of the container indicated that it did not contain alcohol. The Officer filed suit against the City of Chicago (the “City”) and the police deputy superintendent who had ordered him to be processed criminally, alleging various Fourth Amendment and state-law claims. The district court entered summary judgment in favor of the defendants on all claims. The Officer appealed, contending that probable cause did not support either the order that he undergo a breathalyzer examination or the open-container citation.

***APPEAL*:** The Court of Appeals held that: (a) these officers had probable cause to arrest arrestee; (b) the fact that the arrestee was able to pass field sobriety tests did not negate probable cause for arrest; (c) the fact that none of the police officers who interacted with arrestee said they noticed scent of alcohol on arrestee's breath or observed overt signs of intoxication did not negate probable cause for arrest; (d) the superintendent was entitled to qualified immunity from Fourth Amendment claim; (e) the superintendent acted within scope of her authority, for qualified immunity purposes; and (g) the arrestee could not maintain malicious prosecution claim.

**8. Llovet v. City of Chicago,** 761 F. 3d 759, Aug. 1, 2014

***ISSUE*:** Was this defendant illegally seized when he was charged with aggravated battery while in jail on an unrelated charge?

***APPEAL*:** The Court of Appeals held that the plaintiff was not “seized” in violation of the Fourth Amendment when he was charged with aggravated battery while in jail awaiting trial on charge of misdemeanor domestic battery, resulting in the plaintiff's prolonged detention.

**9. Ball v. City of Indianapolis,** 760 F. 3d 636, July 25, 2014

***ISSUE*:** Were the City and its police detective liable for false arrest based upon an affidavit obtained by the detective?

***FACTS*:** The plaintiff sued a Indianapolis police detective and various state and municipal defendants after she was arrested in error based on a probable cause affidavit that the detective prepared. The district court dismissed the plaintiff's claims against the state defendants and granted judgment on the pleadings as to all of the municipal defendants, leaving only her Fourth Amendment claim against the detective. The plaintiff then sought leave to amend her complaint to abandon the remaining federal claim and assert only state-law claims against the detective. The court granted the motion to amend and, at the plaintiff's request, remanded the case to state court, where it had originated. The plaintiff then appealed the district court's adverse rulings on her other claims.

***APPEAL*:** The Court of Appeals held that: (a) the District Court's remand order constituted a final judgment permitting appeal of the District Court's prior orders disposing of certain claims; (b) the city was not liable under § 1983 for the police detective's conduct of drafting and signing an affidavit supporting an arrest warrant; (c) the state-law claims against the city were tort claims, subject to the Indiana Tort Claims Act; (d) the detective was entitled to immunity, for purpose of state-law claims; (e) the arrestee waived any argument on appeal that the District Court erred in finding that the Indiana law did not recognize a civil remedy in the form of monetary damages for Indiana constitutional violations; and (f) the arrestee lacked standing to pursue claims against state officials for violation of the Indiana criminal code.

**10. Wilson v. City of Chicago,** 758 F.3d 875, 94 Fed. R. Evid. Serv. 1353, July 14, 2014

***ISSUE*:** Were these officers and the City liable for the shooting death of a suspect?

***FACTS*:** This case arises out of the fatal shooting of a suspect by a Chicago police officer. The suspect’s estate filed suit against the City of Chicago and the officers who were present at the scene. The estate ultimately asserted the following claims at trial: (1) a claim against the police officers pursuant to § 1983 for excessive force in violation of the Fourth Amendment; (2) a claim for wrongful death against the police officers pursuant to Illinois law; (3) a claim under the Illinois Survival Statute against the police officers; and (4) a claim that the City was liable for the torts of the officers under the theory of *respondeat superior.* The jury found in favor of the defendants on each of the estate's claims, and the district court denied the estate's motions for a new trial and for judgment as a matter of law. The estate then appealed, asserting that the trial court made several incorrect evidentiary rulings and erred in various respects regarding the manner in which it instructed the jury.

***APPEAL*:** The Court of Appeals held that: (a) the plaintiff had burden to prove that the officers acted without legal justification; (b) the failure of a jury instruction defining “willful and wanton conduct” to reference the requirement of “actual or deliberate intention to cause harm” was harmless error; (c) the evidence regarding the victim's history of drug and alcohol use was relevant; (d) the probative value of the victim's drug and alcohol use was not outweighed by danger of unfair prejudice; (e) the probative value of evidence that the victim had six-inch throwing knife taped to his thigh when he was shot was not outweighed by danger of unfair prejudice; and (f) the plaintiff forfeited any challenge on appeal to the trial court's sustaining of the defendants' objections to cross-examination questions.

**11. Scherr v. City of Chicago,** 757 F. 3d 593, July 2, 2014

***ISSUE*:** Did this police officer’s affidavit for a search warrant render the Officer, and the City, violate this plaintiff’s rigths?

***FACTS*:** The plaintiff sued two Chicago police officers, plus the City itself, primarily seeking damages for their having (she alleged) violated her Fourth Amendment rights—the officers by including deliberate falsehoods in their affidavit supporting their request for the issuance of a search warrant and the City by failing to give the officers the training required to prevent their irresponsible behavior. The district judge granted the' motion to dismiss the case for failure to state a claim.

***APPEAL*:** The Court of Appeals held that this Officer’s affidavit was supported by probable cause.

**12. King v. Kramer,** 763 F. 3d 635, July 10, 2014

***ISSUE*:** Was this County liable for the death of a detainee in its jail?

***FACTS*:** John King was in police custody awaiting his probable cause determination. After being rapidly tapered off his psychotropic medication by the jail medical staff, complaining of seizure-like symptoms, and being placed in an isolated jail cell for seven hours, he was found dead. The administrator of his estate brought this civil suit against the County and various individual employees of the County for over four years.

***APPEAL*:** The Court of Appeals held that: (a) the District Court abused its discretion in determining that the estate waived its claim premised on an objectively unreasonable standard and thus would have to proceed under incorrect deliberate indifference standard; (b) the county was not liable for detainee's death; (c) the District Court could not take judicial notice of a contract between the county and the provider; and (d) the indemnification agreement between the county and the provider was inadmissible to show liability.

**JULY - 2014**

**1. Venson v. Altamirano, No. 12-1015, 749 F. 3d 641, C.A.7 (Ill.), April 18, 2014**

**ISSUE:** Did the police illegally arrest this defendant after hearing him yell “Rocks, Rocks” while standing on a street?

**FACTS:** Police officers arrested the defendant for possession of a controlled substance and solicitation of an unlawful act, and he spent 19 days in jail. After a preliminary hearing resulted in the dismissal of the charges for want of probable cause, the defendant sued the three officers involved in his arrest for false arrest, illegal search, and malicious prosecution pursuant in a civils action. Following jury verdict for the Officers, the District Court denied the arrestee's motions for judgment as a matter of law, to set aside the judgment, for a new trial, and for sanctions. The arrestee appealed then brought this appeal.

**APPEAL:** The Court of Appeals held that the alleged credibility issues regarding testimonies of police officers did not warrant grant of judgment notwithstanding the verdict.

**2. Sutterfield v. City of Milwaukee, No. 12-2272, 751 F. 3d 542, (C.A.7 (Wis.)), May 09, 2014**

**ISSUE:** Did the police legally enter this plaintiff’s home based upon a report that she was going to harm herself and then seize the plaintiff and her firearms?

**FACTS:** A homeowner brought civil rights action against this city and several police officers, alleging violations of the Second, Fourth, and Fourteenth Amendments. The District Court granted summary judgment in favor of defendants. The homeowner appealed.

**APPEAL:** The Court of Appeals held that: (a) it was objectively reasonable for the police to believe that danger to homeowner's well-being was ongoing and that they needed to enter; (b) the officers were entitled to qualified immunity for entering home and detaining homeowner; (c) officers were entitled to qualified immunity for opening locked case; and (d) the officers were entitled to qualified immunity for seizing gun.

**3. Petty v. City of Chicago, No. 12-3303, --- F.3d ----, 2014 WL 2568264, (C.A.7 (Ill.)), June 09, 2014**

**ISSUE:** The police illegally coerce a witness into testifying naming the plaintiff as a murder and then failing to disclose this conduct?

**FACTS:** The plaintiff filed a civil rights action against the city and several city police officers alleging that officers violated his due process rights by intentionally mishandling a shooting investigation, prosecuting him for murder based on falsified evidence, and failing to disclose their misconduct. The District Court granted the city's motion to dismiss and granted the officers' motion for summary judgment on the plaintiff's constitutional claims. The plaintiff appealed.

**APPEAL:** The Court of Appeals held that: (a) the officers did not violate plaintiff's due process rights by allegedly coercing witness into identifying him as assailant; (b) the officers did not violate plaintiff's rights under *Brady*; and (c) the city was not subject to liability.

**4. Gibbs v. Lomas, No. 13-3121, --- F.3d ----, 2014 WL 2736066, (C.A.7 (Wis.)), June 17, 2014**

**ISSUE:** Was this Officer liable for the arrest of the plaintiff for disorderly conduct after the plaintiff was seen carrying an un-holstered firearm in his car.

**FACTS:** This arrestee filed a civil rights action against a police officer, alleging that his arrest and the search of his motor vehicle violated his Fourth Amendment rights. The District Court denied the officer's motion for summary judgment on the basis of qualified immunity. The Officer filed an interlocutory appeal.

**APPEAL:** The Court of Appeals held that the officer was entitled to qualified immunity.

**5. Hawkins v. Mitchell, No. 13-2533, --- F.3d ----, 2014 WL 2808981, (C.A.7 (Ill.)), June 23, 2014**

**ISSUE:** Did the police in this case legally enter the plaintiff’s home and arrest him for failing to answer their questions?

**FACTS:** This arrestee brought civil rights action against these defendant police officers and their city, alleging false arrest, excessive force, First Amendment retaliation, and various state claims. The defendants moved for summary judgment arguing that they had probable cause to enter the arrestee's home and make an arrest. The District Court granted the motion in part. The arrestee also proceeded to trial on his wilful-and-wanton-battery and excessive-force claims. The District Court entered judgment on jury verdict in favor of the officers. The arrestee appealed both judgments.

**APPEAL:** The Court of Appeals held that: (a) the officers lacked probable cause to enter home; (b) the officer's lacked probable cause to effectuate arrest; (c) a fact issue existed as to whether arrestee engaged in disorderly conduct; (d) a fact issue existed as to whether arrest was retaliation; (e) the plaintiff’s refusal to answer questions was not obstruction; and (f) a jury instruction substantially prejudiced the arrestee.

**APRIL - 2014**

**1. White v. Stanley, --- F.3d ----, 2014 WL 929049, No. 13‐2131, C.A.7 March 11, 2014**

**ISSUE:** ***1)*** Does the smell of burning marijuana, without more, provide exigency permitting a warrantless entry into a house? (No); ***2)*** Were these deputies entitled to qualified immunity from a false arrest claim under these circumstances?

**FACTS:** James White was arrested in his home in March of 2010 for obstructing a peace officer. Two deputy sheriffs came to White's house without a warrant looking for his live-in girlfriend, Nancy Hille, on suspicion that she had stolen a license-plate registration sticker. White refused to let them in and tried to slam the door, at which point one of the deputies jammed her foot in the door and the deputies entered the house. The deputies took White to the ground. The deputies claim that this entry was justified because they smelled burning marijuana when they were outside the door. White sued for false arrest, and the district court found that no exigency existed. It also denied the deputies' qualified immunity defense, finding it waived. The deputies took an interlocutory appeal, and we reverse.

**APPEAL:** The Court of Appeals held that: (a) the smell of burning marijuana, without more, did not provide exigency permitting deputies to make warrantless entry, but (b) the deputies were entitled to qualified immunity from false arrest claim.

**2. Huff v. Reichert, --- F.3d ----, 2014 WL 906103, No. 13‐1734, C.A.7, March 10, 2014**

**ISSUE:** Was this arresting officer potentially liable for the unlawful detention and search of this individual’s car and person.

**FACTS:** Officer Michael Reichert pulled over Terrance Huff and Jon Seaton on the interstate highway in Illinois. Reichert said their car had crossed the white divider line without signaling. After sixteen minutes, he gave Huff a written warning. However, Reichert continued to detain the pair for thirty-four more minutes, during which time he conducted a pat-down of both men, a dog sniff of their car's exterior, and a thorough search of their car's interior. Huff and Seaton sued Reichert in civil rights action, alleging Fourth Amendment claims of unreasonable seizure, false arrest, and an unreasonable search of their persons and of Huff's car. The district court denied Reichert's motion for summary judgment based on qualified immunity. We affirm.

**APPEAL:** The Court of Appeals held that: (a) the officer did not have reasonable suspicion to stop driver on basis that he was driving with out-of-state license plates on particular stretch of highway where much drug trafficking occurred; (b) a reasonable person would not have felt free to leave, and thus traffic stop had been converted into full-blown arrest; (c) a prudent, reasonable officer would not have concluded that driver was committing a crime on basis that driver had two arrests from over one decade ago and he was driving through high-crime area; (d) the evidence in this case raised a genuine issue of material fact as to whether the driver and the passenger had consented to search of their persons; (e) a prudent, reasonable officer would not have had reasonable suspicion that driver or passenger was armed and dangerous, as required to conduct pat-down search in context of a traffic stop; (f) the driver did not waive claim that police officer had unreasonably searched his vehicle; and (g) the Court of Appeals lacked interlocutory jurisdiction to review district court's conclusion that genuine issues of material fact existed as to legality of search of vehicle.

**3. Carter v. City of Milwaukee, 743 F. 3d 540, No. 13‐2187, C.A.7, February 19, 2014**

**ISSUE:** Was this police officer seized when he was stopped and searched by his commanding officer before he was allowed to use the bathroom?

**FACTS:** While police officers were executing a search warrant in a Milwaukee apartment, the apartment's resident accused the police of taking around $1750 of his cash. The commanding officer then ordered all officers to remain on the scene while they awaited further direction. This order did not come at a good time for Officer Montell Carter, who had taken a colon cleansing product outside the apartment and now needed to use the restroom, badly. Not wanting to use the apartment's bathroom, Carter told then-Lieutenant Keith Eccher he needed to leave to use the restroom. The lieutenant put his hand up and responded that he needed to search Carter first. The lieutenant then patted Carter down and searched his jacket, boots, and the items he was carrying. The dramatic ending to these events is, in fact, not dramatic at all. The lieutenant did not find the allegedly missing cash or any contraband on Carter, and Carter returned to the police station and used the restroom there. Carter filed this lawsuit maintaining he was the subject of an unconstitutional seizure and search. Because no reasonable officer in Carter's position would have feared arrest or detention if he did not comply with the search request, we conclude he was not seized. As a result, we affirm the district court's grant of summary judgment in the defendants' favor.

**APPEAL:** The Court of Appeals held that this officer was not seized within meaning of Fourth Amendment.

**4. Wourms v. Fields, 742 F. 3d 756, C.A.7, No. 13‐1178, February 05, 2014**

**ISSUE:** Was this arresting officer potentially liable for the death of a suspect during a high-speed chase?

**FACTS:** Sixteen-year-old Dane Wourms was killed when, in a high-speed pursuit by an unmarked police car that began shortly after 1 a.m., his car veered off the road and crashed. The personal representative of Wourms's estate (his father) brought this civil rights suit against the officer driving the police car. The additional defendant, the officer's employer, is joined only as a potential indemnitor should the officer be found liable; we can ignore it. Another redundancy is the naming of the estate, in the complaint and all subsequent filings in the district court and this court, as a plaintiff in addition to the estate's personal representative. That's equivalent to the government's filing a suit in the name of the Justice Department and Attorney General Holder, as two separate plaintiffs. We have reformed the caption to eliminate the estate as a party, since an executor or administrator of an estate (and the personal representative of Dane Wourms's estate must be one or the other) is the authorized suitor on the estate's behalf, not the estate itself or its beneficiaries. The plaintiff argued that the crash was caused by the police car's intentionally ramming Wourms's car, resulting in an unconstitutional seizure of his person and property. The officer denied that his car had touched Wourms's car, and the district court granted summary judgment for the officer on the ground that the evidence obtained in pretrial discovery was insufficient to enable a reasonable jury to find that the cars had collided.

**APPEAL:** The Court of Appeals held that: (a) there was no evidence that the police car collided with the suspect's car; (b) the witness's summary judgment evidence failed to demonstrate that the police car struck suspect's car; and (c) the summary judgment evidence of the police officer's call to the dispatcher upon discovering wreckage of suspect's car failed to demonstrate that officer was talking about his own car.

**5. Rooni v. Biser, 742 F. 3d 737, C.A.7, No. 13‐1511, February 04, 2014**

**ISSUE:** Did this game warden have probable cause to arrest a deer hunter, and did the warden use excessive force in the use handcuffs?

**FACTS:** Deer hunting is serious business in the state of Wisconsin. Although the hunters and the state game wardens may coexist peacefully most of the time, in this case they did not. A dispute erupted between Mitch Rooni, a hunter, and Bradley Biser, a warden employed by the Wisconsin Department of Natural Resources (DNR), and it has now wended its way into federal court. According to Rooni, on November 19, 2005, Biser arrested him without probable cause and used excessive force against him both before and after the arrest. Asserting that his civil rights had been violated by these actions, Rooni brought a civil rights suit against Biser; Biser responded with a motion for summary judgment in his favor on all counts. The district court granted the motion with one exception, for the charge that Rooni used excessive force before the arrest. The parties then jointly filed a motion to dismiss the pre-arrest excessive-force claim with prejudice. The district court agreed to do so and entered a final judgment in Biser's favor. Rooni contends on appeal that the district court erred by granting summary judgment on the unlawful-arrest claim and the claim of excessive force after the arrest in connection with his handcuffing. He also argues that the court was mistaken to conclude that Biser was entitled in any event to qualified immunity. We conclude that the district court correctly granted summary judgment in Biser's favor on the handcuffing claim; at a minimum, Biser is entitled to qualified immunity on this part of the case. Rooni's arrest claim, however, is another matter. Taking his reasonable allegations as true, as we must, we conclude that neither probable cause nor “arguable” probable cause supported Rooni's arrest. This means that a trier of fact could conclude (if it accepted Rooni's evidence) that Biser violated Rooni's clearly established constitutional rights in so arresting him. We thus affirm in part and remand in part to the district court for further proceedings on the wrongful-arrest claim.

**APPEAL:** The Court of Appeals held that: (a) a genuine issue of material fact existed as to whether the game warden had probable cause to arrest the deer hunter, and (b) the hunter's right to be free from the degree of force game warden used in applying the handcuffs was not clearly established.