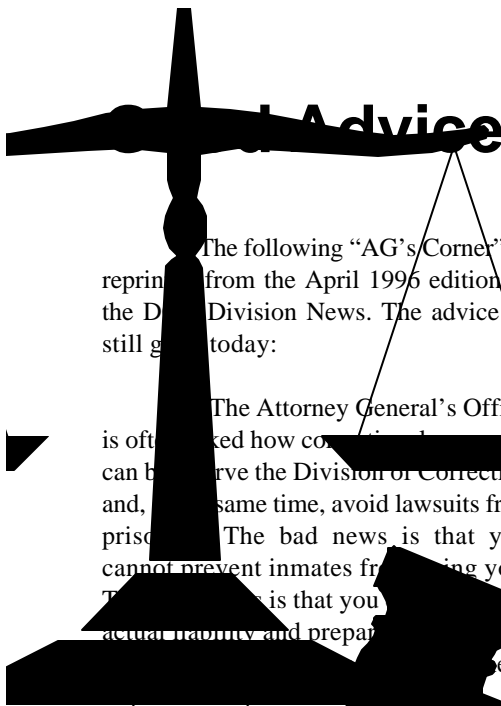


The AG's Docket

News From the Correctional Litigation Division

~ Quarterly Report ~



Legal Advice

The following "AG's Corner" is reprinted from the April 1996 edition of the Division News. The advice is still good today:

The Attorney General's Office is often asked how corrections can better serve the Division of Correction and, at the same time, avoid lawsuits from prisoners. The bad news is that you cannot prevent inmates from suing you. The good news is that you can reduce the actual liability and prepare a strong defense.

1) Keep good written records. An excellent record is clear, concise and thorough. You should write a report as if the reader knows nothing about corrections, giving explanations in terms of safety and security. What is clear to you may not otherwise be clear to a civilian. A civilian is one of many who will later read the report in the courtroom.

2) Keep a diary of the dates and times you work and of all events that are out of the ordinary. A pocket calendar is helpful for this purpose. Keep the calendar until three years after you leave the Division.

3) Know the DCD's. The Division's regulations and directives contain the collective experience and wisdom of the Division. They are written for your safety and the security of the institution. By adhering to the regulations and directives, you are protecting yourself, often physically, and certainly from lawsuits. If you have any questions about the regulations, make sure those questions are answered, so that you can fully follow the DCD's.

4) Do not give an inmate the opportunity to reach you emotionally: you are not his/her parent, social worker, friend or enemy. It is important that you maintain a professional level of detachment so that you can properly acquit your responsibilities. In doing so, you will also be providing the best defense for any lawsuit.

5) Use common sense. The law does not demand the extra-ordinary. In almost all circumstances, the law requires only that you use ordinary judgment. You can be fairly sure that if you use common sense as your guide as a correctional professional, you will be doing right and preventing opening yourself to liability to a prisoner."

In addition to these words of advice, we want to add something else based on recent experience. If you are injured in a confrontation with an inmate, even if it is minor, have the injury treated and evaluated by medical personnel, and be sure it is doc-amended. These documents will help to support your defense should the inmate later sue.

Judgment Granted for MCAC Officers Before Case Goes to Jury

CLD Chief Counsel Stephanie Lane-Weber successfully defended an unusual case in federal court with an unusual outcome. An MCAC inmate alleged that while he was on the ground, handcuffed from behind, a correctional officer used such excessive force in kicking him about the head and body that the inmate's false eye came out. In contrast, correctional personnel maintained that the inmate engaged in kicking the officer first in an effort to gain the attention of a supervising officer.

Close examination of the medical records showed that in fact the inmate's claim was bogus, the inmate

4th Circuit Affirms PLRA

In a June 6th decision in the case of Cagle v. Hutto, arising out of Virginia, the Fourth Circuit Court of Appeals upheld the constitutionality of an important provision of the 1995 Prison Litigation Reform Act. The provision in question, § 3626(b)(2), allows states to vacate prior consent decrees that are not narrowly drawn and the least restrictive means of correcting the violation.

The appellate court rejected the inmates' legal arguments, finding them inconsistent with the basic purpose of the PLRA, which the Court said was "to remove the federal district courts from the business of supervising the day-to-day operation of state prisons."

Amos ADA Litigation Proceeding

On June 24, 1999, a divided panel of the U.S. Fourth Circuit Court of Appeals issued an opinion in Amos v. Md. DPSCS holding that the Americans with Disabilities Act was a constitutional exercise of Congressional power under the 14th Amendment even insofar as it is applied to state prison inmates. In so doing, the panel majority rejected the State's position that prior Supreme Court cases defining prisoners'

having suffered at most minor abrasions due to his own recalcitrance. The Honorable William N. Nickerson granted the defendants a directed verdict at the constitutional rights set the upper limit for constitutional application of the ADA in a prison context. While the panel decision did not set clear standards for the application of the ADA in a prison context, it did appear to give more deference to federal ADA regulations than to the expertise of prison administrators, raising the specter of significant federal interference in the running of state prisons.

The dissenting judge expressed the opinion that the ADA as a whole fell outside the civil rights enforcement power given to Congress by the 14th Amendment, a position not asserted by the State. The opinion of the dissenting judge in Amos is in accord with a decision of a divided panel of the Eighth Circuit Court of Appeals, issued the day before, holding that the ADA exceeded the 14th Amendment enforcement power of Congress, and therefore could not be applied against the states in the face of a defense of sovereign immunity. Allsbrook v. City of Maumelle, No. 97-1825 (8th Cir., July 23, 1999).

A matter of days before the panel decision in Amos, the Supreme Court decided the case of Olmstead v. L.C., 1999 WL 407380 (June 22, 1999), a case involving the application of the ADA to decisions by administrators of state mental health facilities whether to house patients in hospitals or in community settings. The State reads Olmstead as requiring courts to give more deference to decisions of state administrators, especially where significant budgetary concerns are at stake.

The day after Olmstead, the Supreme Court issued opinions in two

end of the plaintiff's case, thereby exculpating the defendants and giving them a victory without the necessity of putting on a defense.

companion cases involving the application of federal copyright and trademark law to a Florida state pre-paid tuition plan, 1999 WL 412639, 412723. In these decisions, the Court applied and reaffirmed the doctrine of City of Boerne v. Flores, 521 U.S. 507 (1997), which struck down the Religious Freedom Restoration Act as outside Congressional power. The Boerne doctrine had been the basis of the State's argument in Amos.

In light of these recent Supreme Court decisions, on July 8, 1999, the State asked the entire Fourth Circuit to re-hear the Amos case en banc. No decision has been rendered on this petition.

Also at the end of this Term, the Supreme Court decided several other cases limiting and interpreting the ADA. In Sutton v. United Airlines, 1999 WL 407488 (June 2, 1999), the Court held that persons whose vision can be corrected to within normal limits are not disabled as the term is defined under the ADA. In Albertsons, Inc. v. Kirkingburg, 1999 WL 407456 (June 22, 1999), the Court held that an employer may rely on government vision standards for commercial truck drivers, without implementing the waiver program included in those standards. Finally, in Murphy v. United Parcel Service, 1999 WL 407472 (June 22, 1999), the Court held that high blood pressure that is controlled by medication is not a disability under the ADA, nor is one whose high blood pressure is so controlled considered disabled.

Dismissals Dispose of

In one case, an MCAC inmate had alleged that the alternative housing unit cell into which he was placed was filthy with feces, blood and urine. The inmate dropped the case after viewing a videotape showing him being placed into the cell, which was clearly shown to be perfectly clean.

In a second case, also arising out of MCAC, the inmate's interest in the suit lessened after he was released from prison. He finally agreed to drop the case when the Magistrate Judge informed him that he would be charged \$1500 in jury costs if he failed to appear for trial.

In the third case, dismissed as frivolous by the court before CLD was required to respond, the inmate had alleged he was deprived of due process when he was removed from work assignment. The Court reminded the inmate that he had no federally protected constitutional right to any work assignment and that the loss of the inmate's normal pay period if he

Three Cases

The workload of the CLD and of the federal court was lightened this and to exclude it if it does not meet the requirements for admissibility.

This rule can become important in correctional litigation when an inmate obtains the services of an "expert" to testify concerning proper practices. In one such recent case, WMN-98-2461, the Court found the opinions of a corrections consultant retained by the family of an inmate who was killed by another inmate to be irrelevant and unresponsive on the key legal question whether officers knew of and disregarded risk to the victim.

In another ruling dealing with expert witnesses, a magistrate judge ruled in WMN-95-271 that the Department of Justice report on MCAC and the report of the corrections expert on which it was based were inadmissible hearsay. The reports were held not to fall within the exception permitting factual findings. The court ruled that the reports were not based on personal knowledge and that the expert had not testified to the truthfulness of the reports.

quarter by the voluntary dismissal of two prisoner suits, and the dismissal of a third as frivolous.

orders to remain in the dining room following an altercation there involving other inmates. Magistrate Judge Paul Grimm agreed with CLD attorney Gloria Wilson Shelton that the inmate's injuries were caused by reasonable force necessary to restrain him after he refused orders and struck a lieutenant in the face.

The bench trial lasted two days. During the trial, the inmate abruptly abandoned claims of an alleged second incident in the medical unit, resulting in the dismissal of several defendants from the suit.

Judgment for Defense in RCI Assault Case

Following a two-day trial, Magistrate Judge James K. Bredar ruled in favor of seven RCI correctional officers on claims of assault brought by an RCI inmate.

The inmate had alleged that he was beaten and maced without provocation by two officers as he got out of the shower in his housing unit, and that he was later beaten again by other officers in the medical unit. The officers recounted that the inmate swung first coming out of the shower, and that the only force used was that necessary to restrain the inmate.

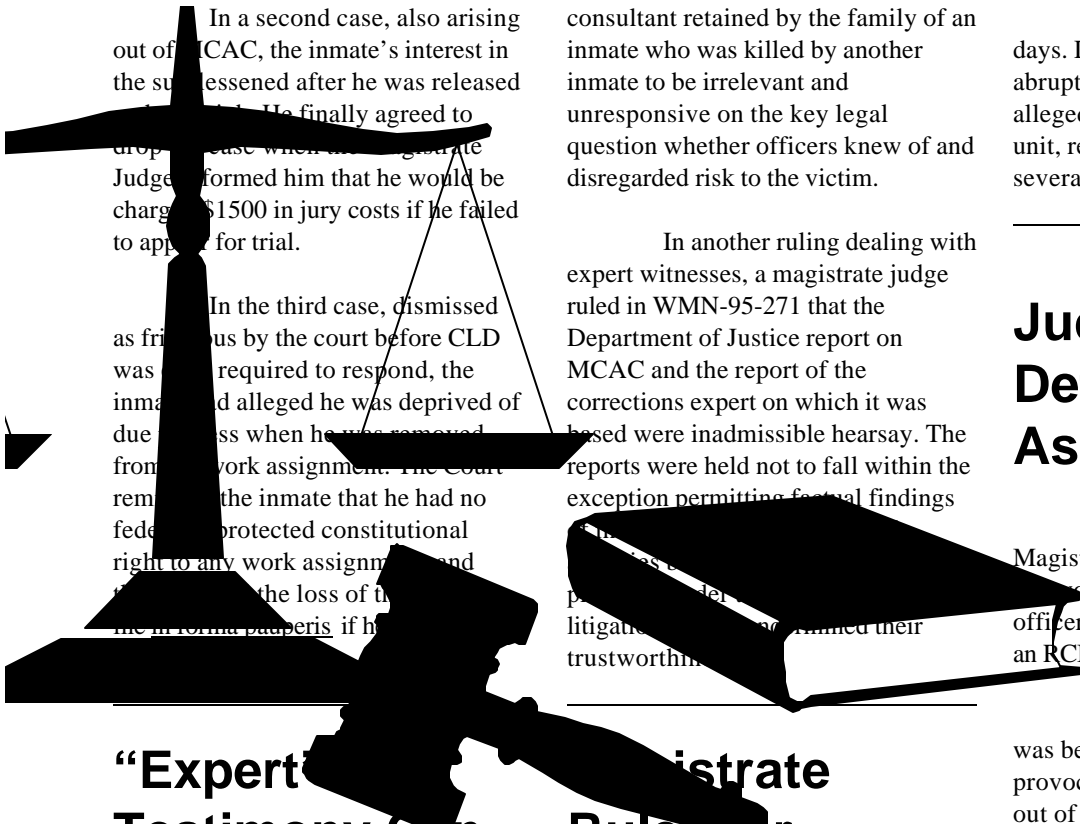
The inmate's claims were belied by the absence of any significant injury, as documented in medical records and photographs. The

"Expert Testimony Can Be Limited

The Supreme Court, in a non-prison case called Kumho Tire v. Carmichael, recently reaffirmed the rule that federal trial judges have the duty to determine whether so-called expert testimony is really worthwhile,

Magistrate Rules for Defense in Annex Case

A federal magistrate judge recently rejected claims by an inmate of the Maryland House of Correction Annex that he was subjected to excessive force when he refused



professional demeanor of the officers while testifying and while waiting in court, corroborated by their thorough reports, established the credibility of the defense. As always, this was the key to the victory. CLD Attorney

CLD Attorney Glenn Bell prevailed in an IGO hearing recently on a failure to protect claim brought by an inmate injured in 1990 by another inmate at what was then the Maryland Penitentiary. The case was difficult because the injuries were serious and because the inmate who committed the assault had several years previously been guilty of other assaults on fellow inmates. However, the hearing officer agreed that after this inmate successfully completed the MCAC program and was returned to the Pen, officials there were not responsible for the attack on the grievant, with whom the assaultive inmate had no known problems.

In a case reported on in the last edition, DKC-97-1842, Magistrate Judge James Bredar submitted a Report and recommendation in favor of two MHCX officers accused of using excessive force. The inmate in that case, now represented by counsel, took exception to the Report on the sole ground that he was not represented by an attorney in the trial before the Magistrate. The district court adopted the Magistrate's Report, rejecting the inmate's argument that an attorney should be appointed in every excessive force case that goes to trial. The district judge reaffirmed the rule that attorneys should be appointed only in extraordinary cases, stated that she had reviewed the tape of the hearing and found the inmate was well able to present his side and concluded that the factual dispute was fairly resolved.

David Kennedy represented the officers.

Other Hearings and Rulings

Qualified Immunity Subject of Decisions

In the recent decision of Wilson v. Layne, 119 S. Ct. 1692 (1999), originating in part in the Fourth Circuit, the Supreme Court reaffirmed and elaborated on the doctrine of qualified immunity that protects public officials, such as correctional officers, from having to pay money damages in cases where they could not reasonably have known that their actions would violate constitutional rights.

The Wilson case was concerned with how the Fourth Amendment's prohibition of unreasonable searches and seizures applies when police bring television and newspaper reporters and photographers with them when warrants are being executed. The Court held that the Fourth Amendment prohibits allowing outsiders into private premises under these circumstances, but denied claims for money damages under the doctrine of qualified immunity.

Although the general principles of the Fourth Amendment are of course well known, the Court said, for purposes of qualified immunity, "the right allegedly violated must be defined at the appropriate level of specificity before a court can determine if it was clearly established." Thus, the question is not whether it was clearly established that persons had a right to be free of

unreasonable searches and seizures, but whether it was clearly established that allowing media to enter the premises when a warrant is executed violates that right. This, the Court held, was not clearly established at the time of the events in question.

In another recent decision from our own federal court, Henderson v. Simms, S-99-949, the qualified immunity doctrine was applied to relieve corrections officials from monetary liability for having reincarcerated several previously released inmates when their sentences were recalculated in accordance with a state court decision that was overturned. Under these

circumstances, the federal court said, corrections officials acted "reasonably, but mistakenly," and were thus entitled to immunity from damages.

Automatic Extensions Extended

For many years under a standing court order, DOC defendants have been automatically given a longer time to respond to prisoner suits than is provided for under the federal rules. This order has now

AMD-98-2810: Summary judgment was granted in this case on the inmate's claim that he was deprived of food and showers for four days while in isolation following an altercation. The record showed conclusively that he received meals, and no physical harm resulted from the lack of showers.

DKC-98-3087: This inmate alleged that a prison department violated his constitutional rights. The inmate sought summary judgment on his claim based on the uncontroverted affidavit of defendants that while bleach is used in the dietary department, ammonia is not. The second claim was denied because of the lack of evidence that the inmate suffered any harm or was deprived of any basic human need.

DKC-98-3086: Another inmate's challenge to conditions on segregation in the same institution were rejected in this case. This inmate

been extended to suits against correctional personnel in Montgomery, Harford and Baltimore Counties.

Recent Federal Court Decisions

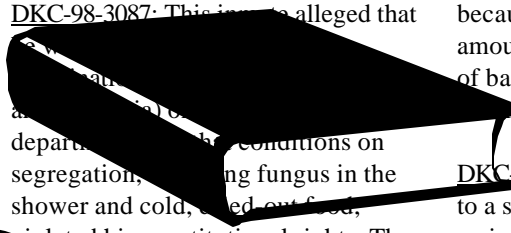
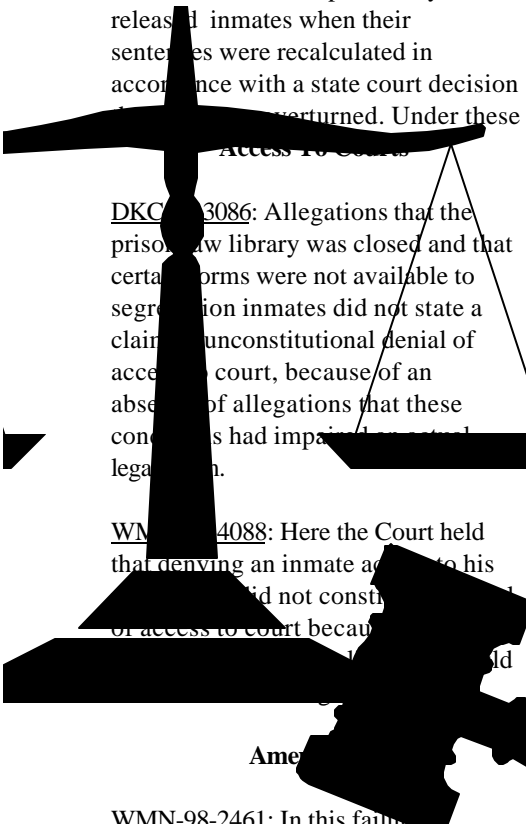
During the months of May through August 1999, the United States District Court for the District of Maryland granted summary judgment against inmates and in favor of correctional personnel in the following matters:

alleged that the tier was dirty, that food was served cold and on dirty trays, that showers are limited to twice per week, that segregation inmates are not allowed to keep basic hygiene items and that visitation privileges are often suspended. Summary judgment was granted in favor of the defendants on these claims, the truth of which the defendants controverted in affidavits, because even if true they did not amount to allegations of deprivations of basic human needs and because no harm was alleged.

DKC-98-2990: This inmate was moved to a segregation tier just before a serious incident occurred. As a result, he went without a mattress and a flushable toilet for several days. The Court rejected his claim that such conditions were unconstitutional.

Conspiracy

AW-98-3973: Allegations that this inmate was the victim of a conspiracy to charge him with an infraction for racial reasons were dismissed. The Court reiterated the rule that conclusory allegations of conspiracy



Conditions of Confinement

DKC-98-3086: Allegations that the prison law library was closed and that certain forms were not available to segregation inmates did not state a claim of unconstitutional denial of access to court, because of an absence of allegations that these conditions had impaired or restricted legal representation.

WMN-98-4088: Here the Court held that denying an inmate access to his attorney did not constitute a denial of access to court because the inmate could have obtained representation through the American Bar Association.

WMN-98-2461: In this failure to protect case, the Court denied the plaintiff's motion to amend his complaint to add additional officers as defendants after the statute of limitations had expired, on the grounds that the officers did not have notice and the plaintiff was aware of the role of the other officers much earlier.

unsupported by facts do not state a claim.

Due Process

DKC-98-2990: Here the Court found that a prison adjustment hearing met the requirements of substantive due process insofar as there was some evidence in support of the result. The Court also rejected the inmate's claim that his rights were violated when he was removed from the hearing after having spoken to another inmate after being told not to, noting that First Amendment rights may be restricted in the interest of maintaining order in prison disciplinary hearings.

DKC-98-3846: The requirements of due process in prison adjustment hearings were held to have been met in this case where the inmate received notice of the infractions, where the hearing officer made factual findings and where there was some evidence to sustain the adjustment. The Court also noted that the due process clause would not apply to the inmate's assignment to disciplinary segregation, as opposed to his loss of good time, nor would it apply to the Warden's action in approving the decision of the hearing officer.

MJG-98-3544: This inmate claimed that his due process rights were violated because the adjustment hearing officer ignored the testimony of his witnesses. The Court granted summary judgment against the inmate, holding that no constitutionally protected liberty interest was at stake because the inmate was sanctioned only with segregation and loss of visitation.

AW-98-3973: After having been removed from an educational program for masturbating, this inmate was found not guilty of the infraction, but was reassigned nonetheless. His claim of denial of due process was denied because no constitutionally protected liberty interest was at stake.

JFM-98-3776: Here the Court held that no constitutional claim of denial of due process was stated by an inmate's allegation that his grievances regarding complaints of food tampering and denial of medical care were improperly handled, as there is no constitutional right to participate in any grievance procedure.

DKC-98-3089: There was no denial of due process in an adjustment hearing in this case where the hearing officer refused to grant the inmate a postponement until he received his hearing aids, because, despite his impairment the inmate was able to hear and understand most of what

Equal Protection

DKC-98-3089: This inmate's conciliatory allegation of racial discrimination in his job assignment was dismissed by the Court, which noted that there must be some factual evidence of discrimination.

AW-98-37: In this case, as well, the Court rejected an inmate's bald allegation, unsupported by any evidence of racial motivation, that he was fired with an infringing racial reasons.

allegation of discrimination. He failed to state a claim under the Equal Protection Clause which the inmate alleged. The defendant refused to assist him in resolving his dispute with another defendant for racial reasons.

Excessive Force

AMD-98-1149: This claim of excessive force was disposed of on summary judgment for the defendants because the inmate had failed to show he suffered more than the *de minimus*

injury indicated in the medical records and because he failed to controvert the officers' sworn assertions that the inmate first assaulted them.

DKC-98-4195: *De minimus* injuries sustained when an inmate admittedly refused to remove his arm from his feed up slot were held in this case not to support an Eighth Amendment claim of excessive force

S-99-1085: An inmate who fell out of his bunk because of a seizure claimed he was further injured by the officer escorting him for treatment; however, summary judgment was granted for the officer when the inmate failed to respond to the officer's affidavit that he did not use any force on the inmate during the escort.

JFM-98-3263: In this case, summary judgment was granted in favor of officers on an inmate's claim that he was injured when he refused to remove his arm from his feed up slot. The Court found the injuries alleged were *de minimus* and the use of some force was justified.

JFM-98-3263: In this case, summary judgment was granted in favor of officers on an inmate's claim that he was injured when he refused to remove his arm from his feed up slot. The Court found the injuries alleged were *de minimus* and the use of some force was justified.

AMD-98-3875: Summary judgment was granted in favor of one of two officers who were alleged to have assaulted an inmate who was claiming against the second officer were simply that he had moved the semi-conscious inmate away from a door after the first officer allegedly struck him.

MJG-98-3544: This inmate claimed he was the victim of a malicious and wide-ranging assault by several officers. The Court granted summary judgment against the inmate and in

favor of the officers, who averred that they subdued the inmate after he swung at them, because the medical records showed that the inmate's injuries were *de minimus*.

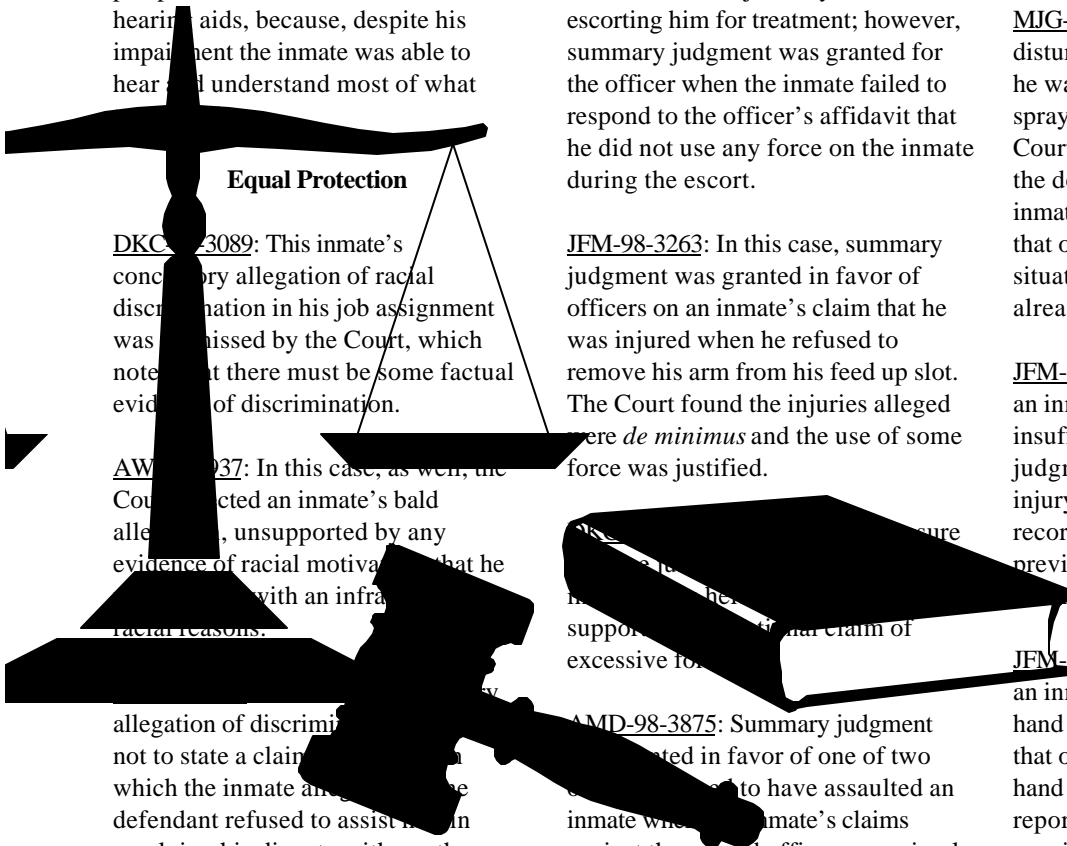
S-98-3777: Summary judgment was readily granted against this inmate, who claimed officers used excessive force in subduing him after he attacked another inmate with a "lock-in-a-sock." The Court found the officers' use of force justified and the inmate's injuries *de minimus*.

MJG-98-3264: During a major disturbance, this inmate, who claimed he was not involved, was allegedly sprayed with mace, hit and kicked. The Court granted summary judgment for the defendant officers, noting that the inmate's injuries were *de minimus* and that officers were faced with a riot situation where two officers had already been stabbed.

JFM-98-3459: A claim that an officer hit an inmate's head against a wall was insufficient to withstand summary judgment on the grounds that the injury was *de minimus*, where the record showed the inmate had not previously complained of or sought compensation for any injury to his head.

JFM-98-3776: This case also involved an inmate who refused to remove his hand from his feed up slot. His claims that officers maliciously beat on his hand were rejected in light of medical reports showing *de minimus* injuries consistent with the officers' version of events, not the inmate's.

L-99-177: In still another case involving an inmate who refused to remove his arm from his feed up slot, the Court found that the record showed that the use of some force was necessary and that the inmate suffered only *de minimus* injuries.



JFM-98-1933: Summary judgment was granted for the defendant officers in this case in which the inmate admitted he refused to comply with lawful orders to return to his cell after his recreation period was cut short due to his openly masturbating. The Court also noted that the inmate's alleged injuries were *de minimus*.

Grievance Procedures

MJG-98-3877: An alleged failure on the part of the Warden to respond properly to an inmate's grievances was held in this case not to be actionable.

Medical Care

MJG-98-3644: Summary judgment was granted for the defendant officers on this inmate's claim that he was denied adequate medical care following an altercation. The Court found the records did not support the inmate's contention that he either needed or requested any further attention after his initial treatment for minor injuries.

L-99-177: A delay of a few hours in obtaining medical care for an inmate who was exposed to mace and suffered a minor finger injury was held not to violate his constitutional rights where officers promptly sought medical attention for the inmate, but where the medical staff was busy with other matters.

CCB-98-4170: No constitutional claim of deliberate indifference was stated by this former inmate who lost his sight due to a brain tumor. Arguable misdiagnosis of the tumor by medical personnel was an insufficient basis for liability.

MJG-98-3877: This inmate alleged that his shoulder was dislocated when he was handcuffed against medical orders.

However, the Court found that the record showed the defendant officer received permission from medical personnel before applying restraints to the inmate, and was thus not deliberately indifferent to any serious medical needs.

DKC-98-2990: Summary judgement was granted against this inmate who claimed he was improperly treated for a wart on his thumb, both because the medical records contradicted the inmate's claim and because the allegations did not involve a serious medical need. This inmate also claimed he was improperly denied a "weight loss" diet. The Court rejected this claim, noting that the inmate had been advised to eat less and exercise more to lose weight and that the DOC does not have a "weight loss" diet.

L-98-2447: Here the Court held that a delay of six hours after an alleged fall did not state a cause of action for deliberate indifference where there was no evidence the injuries were exacerbated by the delay, and where the inmate showed no outward signs of injury immediately after the fall.

AW-99-258: Summary judgment was granted for defendants in this case over the inmate's claim that he was not receiving a medically prescribed cardiovascular diet. The Court found that the record showed the inmate was receiving the prescribed diet and was only dissatisfied with the amount and variety of food included in the diet.

S-99-742: The Court in this case holds that the failure to transfer an inmate to the Patuxent Institution did not deny him needed medical care where there was no showing that the inmate's present care was inadequate, or that Patuxent was the only place he could receive needed treatment.

Parties

L-98-2447: The prison institutions themselves, being parts of the State, are not proper parties to be sued under § 1983.

Privacy

DKC-98-3089: Because an inmate has no reasonable expectation of privacy in his cell, frequent cell searches do not violate the inmate's constitutional rights.

Protection from Harm

WMN-98-3324: The Court denied this inmate's request for injunctive relief requiring defendants to place him on protective custody following an assault on him by another inmate where the plaintiff had lied about what happened and refused to identify the inmate who assaulted him. Summary judgment was also granted on a claim for damages because there was no allegation sufficient to support an inference that any defendants knew the plaintiff was in danger. The Court specifically stated that an allegation that officials knew the prison was a violent place was insufficient.

MJG-98-4056: This inmate, who was assaulted by his cellmate, failed to make out a claim of deliberate indifference to a serious risk of harm against DOC officials where no facts were alleged from which it could be found that there was any reason to know the inmate's cellmate posed a danger to him.

DKC-98-3346: Reclassification of an inmate from protective custody to administrative segregation for a period of time, during which he was not harmed, after he assaulted another protective custody inmate, did not make out a claim of failure to protect from harm.

WMN-98-2461: Deliberate indifference to a known risk of harm was not shown in the case of this inmate who was killed in his cell by another inmate, where none of the deceased inmate's known enemies were housed with him and where the deceased inmate had never expressed concern for his safety to correctional officials. The Court noted specifically that the plaintiff had had the power to close and lock his cell door but chose to leave it open, indicating that he was not in fear for his safety.

WMN-99-197: When this inmate refused to move to general population due to his concern for his safety, the Court's extensive investigation of his concerns, he was placed on administrative segregation. He was subsequently placed on protective custody without any harm having befallen him. Under these circumstances, summary judgment was granted for defendants on the inmate's claim that they had been deliberately indifferent to a serious risk of harm.

Qualified Immunity

S-98-2646: Even assuming this inmate's claim that he should have been placed in protective custody under the ADA, the defendant's failure to place the inmate in protective custody under the ADA in prisons is not a violation of the ADA.

DKC-98-3089: This inmate's ADA claim was also met with a finding that the defendants enjoyed qualified immunity because of the uncertainty of the law in this area.

Restraints

S-98-2646: Placing an inmate in restraints for eight hours after he was caught masturbating in front of female officers was held in this case not to

violate the inmate's rights, given the absence of any injury.

Retaliation

JFM-98-3643: Here the Court granted summary judgment for defendants on an inmate's claim that he was retaliated against for threatening legal action. The Court held that the inmate had shown no evidence of intent to retaliate by transferring the inmate, and no adverse impact from the transfer on his ability to litigate his case

AW-98-3973: In this case, the Court denied an inmate's claim that he was transferred from his educational program in retaliation for his having successfully defended against a charge that he had been masturbating in class. The Court found the claim of retaliation was merely conclusory, unsupported by any evidence of intent to retaliate.

AW-99-135: No claim of a constitutional violation was stated by a bald allegation that officers used threats to coerce this inmate into dropping an administrative grievance, in part because there is no constitutional right to file a grievance.

DKC-98-3089: Claims of retaliation for filing a grievance were dismissed where the alleged retaliatory acts consisted of using vulgar language, conducting cell searches, and random drug tests and allegedly "disciplinary" infractions. The Court held the inmate had not alleged facts from which it could be inferred that any of the acts complained of were in retaliation for the grievance, noting "a plaintiff cannot bootstrap a frivolous complaint with a conclusory allegation of retaliation."

Supervisory Liability

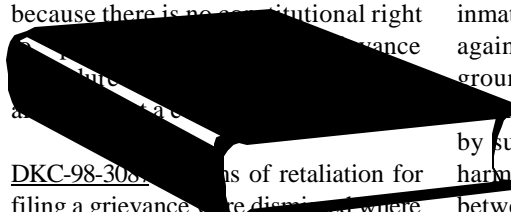
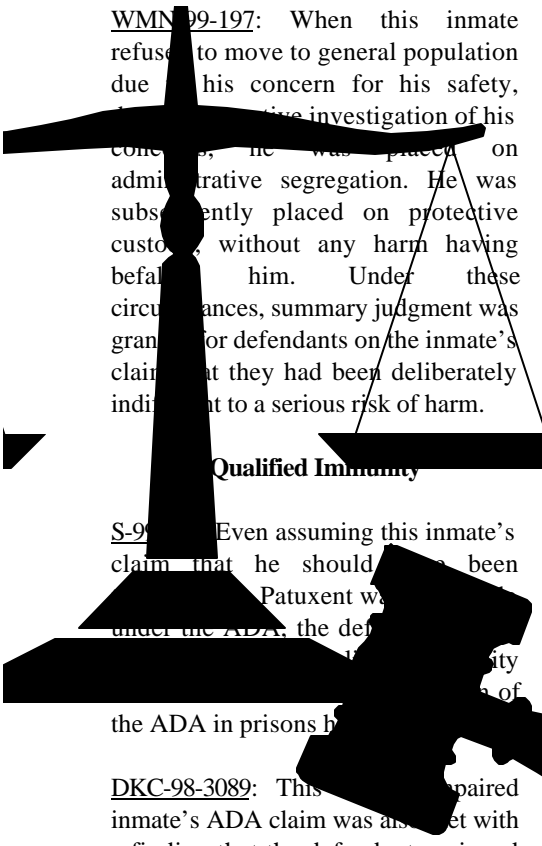
WMN-98-2461: In this failure to protect case in which an inmate was killed, the Court held that the plaintiff had not established a case of supervisory liability against the warden, assistant warden and security chief because it had not been shown either that these officials participated in any wrongdoing or had knowledge of a pattern of conduct that presented a pervasive and unreasonable risk of harm. Similarly, the plaintiff failed to show how alleged training deficiencies proximately caused the deceased inmate's demise.

MJG-98-4056: No claim of supervisory liability on the part of the Secretary, Commissioner and Warden was stated in this case in which an inmate was assaulted by his cellmate, the plaintiff having failed to show that these defendants had any knowledge of any conduct by subordinates that posed any risk of harm, or that they were deliberately indifferent to any such knowledge.

AW-99-135: This inmate alleged he had suffered in various ways after having been identified by an officer to other inmates as a homosexual. His claim against the Warden was rejected on the grounds that he had shown no evidence of knowledge by the Warden of conduct by subordinates that posed any risk of harm, and had shown no connection between any training deficiency and the violation alleged.

Verbal Harassment

JFM-98-3643: The Court in this case reiterated the rule that allegations of verbal harassment, threats and aggravating language, without more, do not state a constitutional claim. This inmate had claimed that his classification counselor had verbally abused and intimidated him.



AW-99-135: An isolated incident in which an officer allegedly identified an inmate as a homosexual in front of other inmates was held not actionable in and of itself in the absence of evidence that the remark incited other inmates to commit assault.

DKC-98-3089: An allegation that a health care worker shouted obscenities at this inmate when he complained about the condition of his hearing aids did not state a constitutional claim.

The AG's Docket ("The Attorney General's Docket") is published through the Correctional Litigation Division of the Office of the Attorney General at 200 St. Paul Place, 19th Floor, Baltimore, Maryland 21202. **(401) 576-6300**.

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