AELE Monthly Law Summaries

of articles online at www.aele.org/law from the:
• AELE Law Enforcement Liability Reporter
• Fire and Police Personnel Reporter
• AELE Jail and Prisoner Law Bulletin
Enter user name "sep" and password "pistol"

Sign up for e-mail notification that next month's AELE publications are online: www.aele.org/e-signup.html

Summaries from the September 2005 AELE Law Enforcement Liability Reporter

The online edition has a featured article on all underlined cases plus the full opinion. Cases without underlining are noted in brief only in the online edition, but will feature a link to the full opinion, if available on the Internet.

Assault and Battery: Handcuffs

Police officer whose improper application of handcuffs to arrested 16-year-old allegedly caused a 1.3% permanent impairment was not entitled to a directed verdict in an excessive force lawsuit. Plaintiff was properly awarded $153,000 in damages and $51,692.15 in attorneys' fees. Hanig v. Lee, No. 04-2758, 2005 U.S. App. Lexis 14436 (8th Cir.).

While police officer had probable cause to arrest motorist for reckless driving, genuine issues as to whether he improperly used excessive force against her after she was handcuffed. Polk v. Hopkins, 129 Fed. Appx. 285 (6th Cir. 2005).

Assault and Battery: Physical

Police officer's actions in tackling an arrestee who had fled from the scene of a search warrant, and who was reasonably believed to be armed based on a radio transmission the officer had heard, were not an excessive use of force. Brown v. Pfaff, No. CIV.03-404, 357 F. Supp. 2d 781 (D. Del. 2005).

Assault and Battery: Tasers

•••• Editor's Case Alert ••••

Federal court grants summary judgment to Taser International in lawsuit filed by city attempting to obtain indemnification on a products liability basis for the death of an arrestee killed by a police officer who mistakenly shot him with her Glock semiautomatic weapon when she intended to use her Taser. Court rejects argument that Taser was liable because of a "design defect" making the Taser look too much like a gun, or on the basis of several other theories. Torres v. City of Madera, #02-6385, U.S. District Court, E.D. Cal. (July 11, 2005).

Defenses: Qualified Immunity

Officer was entitled to qualified immunity for shooting and killing a suspect in a drug transaction investigation who was slowly moving a vehicle towards him, which threatened to crush him into another car. Robinson v. Arrugueta, No. 04-10856, 2005 U.S. App. Lexis 13456 (11th Cir.).

Police officer who tackled suspect he observed in a physical confrontation with another officer who had called for backup was entitled to qualified immunity for tackling the suspect, when no clearly established case law at the time put him on fair notice that such action was unlawful. Lyons v. City of Xenia, 2005 U.S. App. Lexis 16034 (6th Cir. August 04, 2005)

False Arrest/Imprisonment: No Warrant

•••• Editor's Case Alert ••••

No reasonable officer could have believed that there was arguable probable cause to arrest, for obstruction, an African-American attorney who allegedly watched a traffic stop of two young black men by white police officers from forty to fifty feet away, and did nothing to interfere or intervene. Officers were not entitled to qualified immunity from liability. Walker v. City of Pine Bluff, No. 04-1969, 2005 U.S. App. Lexis 14802 (8th Cir.).

Witness in murder case was under arrest when he was interviewed because officers handcuffed him, put him in the back of their squad car and took him to the police station for the questioning, defeating the officer's argument that they had not made an arrest. Additionally, there was an issue of material fact as to whether the city had an official policy of handcuffing and detaining all witnesses in murder investigations, precluding summary judgment for the city in the witness's false arrest/false imprisonment lawsuit. Taylor v. City of Detroit, 368 F. Supp. 2d 676 (E.D. Mich. 2005).

Officers who were merely present when a number of arrestees were allegedly grabbed and handcuffed by other unidentified officers could not be held liable vicariously for the

other officers' alleged improper arrests. Neyland v. Molinaro, No. 03-73090, 368 F. Supp. 2d 787 (E.D. Mich. 2005).

Summary judgment was improper in false arrest lawsuit by fast food patron taken into custody by deputy sheriff after he presented a genuine one hundred dollar bill for payment which restaurant mistakenly believed was counterfeit, based on a genuine issue of fact as to whether the deputy acted reasonably in making the arrest. Kennedy v. Sheriff of East Baton Rouge, No. 2004 CA 0574, 899 So. 2d 682 (La. App. 1st Cir. 2005).

There was probable cause to arrest a police officer for being involved in a drug deal when he failed to immediately report that a confidential informant had picked up a package at the bus station, and also failed to follow the informant after the pick-up. Hunter v. City of Monroe, 128 Fed. Appx. 374 (5th Cir. 2005).

Officers were entitled to qualified immunity for arresting the wife and daughter of a man they were attempting to arrest. The record showed that both the wife and daughter knowingly tried to interfere with the officers through both shouting at the officers, and attempting to approach the man being arrested. Demster v. City of Lenexa, 359 F. Supp. 2d 1182 (D. Kan. 2005).

False Arrest/Imprisonment: Unlawful Detention

A 24-hour detention of a motorist arrested under a valid bench warrant for unpaid traffic citations did not shock the conscience. Luckes v. County of Hennepin, No. 04-3156, 2005 U.S. App. Lexis 15437 (8th Cir.).

False Arrest/Imprisonment: Warrant

Police officer had probable cause to arrest woman for obstruction when she blocked his entry into her home to arrest her son inside, for whom he and accompanying officers had two arrest warrants. Ward v. Moore, 2005 U.S. App. Lexis 14424 (8th Cir.).

Arrestees in two separate cases adequately stated a claim for false arrest under warrants obtained by officers. Plaintiffs in both cases presented allegations that officers had made false statements that drug substances had been seized from the suspects, and had tested positive for the presence of drugs. Jenkins v. De La Paz, 124 Fed. Appx. 265 (5th Cir. 2005).

Firearms Related: Intentional Use

Undercover federal drug agent acted reasonably in fearing for her life and shooting a suspect participating in an attempted armed robbery during a drug transaction. U.S. government not liable under Federal Tort Claims Act for agent's actions which caused suspect to be paralyzed from the waist down. Morales v. US, No. 03-1743, 2005 U.S. App. Lexis 10082 (6th Cir.).

First Amendment

Christian minister banned by city, under threat of arrest, from displaying anti-homosexuality signs on pedestrian overpasses above highways was entitled to further proceedings to determine whether the city was truly motivated by traffic safety, or whether the action was based on the content of his message. Ovadal v. City of Madison, 2005 U.S. App. Lexis 14554 (7th Cir.).

City ordinance which prohibited all meetings, parades, or assemblies on public streets or sidewalks without a permit was unconstitutional to the extent that it applied to small groups and absolutely prohibited all such activities on Sunday mornings. Cox v. City of Charleston, 2005 U.S. App. Lexis 15255 (4th Cir.).

Closing of one corner of an intersection during a visit by the President was a reasonable time, place, and manner restriction on protest speech and did not violate the 1st Amendment. Burnett v. Bottoms, 368 F. Supp. 2d 1033 (D. Ariz. 2005).

Malicious Prosecution

A motorist could not pursue a claim for damages for alleged malicious prosecution for a traffic infraction in the absence that his conviction or sentence had been reversed on appeal, expunged, declared invalid or otherwise set aside. Koger v. Florida, No. 04-15649, 130 Fed. Appx. 327 (11th Cir. 2005).

Grand jury indictment showed that prosecution of suspect for possessing a gambling device was supported by probable cause, entitling officer who gave grand jury testimony to qualified immunity in suspect's subsequent malicious prosecution lawsuit. Matheis v. Fritton, No. 03-7719-CV, 128 Fed. Appx. 787 (2nd Cir. 2005).

Other Misconduct: Eviction

City code enforcement officers were not liable for civil rights violations for evicting two residents from their home without a pre-eviction hearing. The officers had the legal authority to issue emergency vacate orders, and had grounds to do so in light of the residents keeping 33 dogs and four birds in the two bedroom house, which was allegedly in an unsanitary condition. Sell v. City of Columbus, 127 Fed. Appx. 754 (6th Cir. 2005).

Public Protection: Disturbed/Suicidal Persons

City was immune under Indiana state law and could not be held liable for officer's alleged negligent failure to prevent suicide of man who had threatened to shoot himself in the chest. Savieo v. City of New Haven, 824 N.E.2d 1272 (Ind. App. 2005).

Pursuits: Law Enforcement

Police officer was engaged in attempting to enforce the law when he pursued a van whose driver he suspected was drunk, which resulted in the pursued van colliding with another motorist's vehicle, causing the driver's death. Under these circumstances, the officer, police department and town were immune from liability under Indiana state law. Chenoweth v. Estate of Wilson, 827 N.E.2d 44 (Ind. App. 2005).

Roadblocks

Factual dispute between police officer, who claimed he used no force at all against motorist he stopped at road block, and motorist, who claimed that he grabbed her and repeatedly

"slammed" her against a car made summary judgment in her excessive force lawsuit inappropriate. Murry v. Barnes, No. 04-1545, 122 Fed. Appx. 853 (7th Cir. 2004).

Search and Seizure: Home/Business

Officers were not entitled to summary judgment in lawsuit for unlawful entry into home when that entry and the seizure of a resident were not supported by a warrant, consent, or exigent circumstances. Cummings v. City of Akron, No. 03-3259, 2005 U.S. App. Lexis 14950 (6th Cir.).

Officers had exigent circumstances justifying their warrantless entry into an apartment when they observed an occupant within through an open doorway jump up from a table and run to the back of the residence with a clear plastic bag containing a white powder substance. The officers reasonably believed that the occupant was attempting to destroy contraband. Harris v. Lee, 127 Fed. Appx. 710 (5th Cir. 2005).

Search and Seizure: Vehicle

Search warrant issued for impounded auto as part of investigation of double murder was not a "valid" warrant on which reliance was objectively reasonable when the make, model, year, VIN, and license plate number were wrong and actually described another auto owned by another member of the same family. Knott v. Sullivan, No. 04-3045, 2005 U.S. App. Lexis 16588 (6th Cir.).

Police officer did not violate tow truck driver's Fourth Amendment rights by stopping her vehicle to investigate whether she had towed a car in violation of the provisions of a county ordinance, when the ordinance required that the car owner or their agent be present, and the towing company had a history of repeatedly ignoring that provision of the law. Poole v. Pass, No. 1:04CV1268, 351 F. Supp. 2d 473 (E.D. Va. 2005).

Sheriff's deputies did not violate an arrestee's rights by impounding his motor home and inventorying the contents after his arrest for driving without a valid driver's license. Rose v. Loos, 130 Fed. Appx. 78 (9th Cir. 2005).

Sexual Assault and Harassment

City held liable, under Michigan state law, for officer's alleged criminal sexual conduct towards 3 female motorists during separate traffic stops. Intermediate appeals court upholds judgment of $2.625 million against city on the basis of jury verdict awarding drivers $7.5 million, and allocating 35% of the fault to the city. Diamond v. Witherspoon, No. 252657, 696 N.W.2d 770 (Mich. App. 2005).

Strip Searches

Officers who subjected a female shopper to a body cavity search after she activated a store security sensor were entitled to qualified immunity, when the evidence showed that she told a male officer she had no objection to being searched, or to waiting for a female officer to arrive to conduct the search. McNeal v. Roberts, 129 Fed. Appx. 110 (5th Cir. 2005).

Summaries from the September 2005 Fire and Police Personnel Reporter

The online edition has a featured article on all underlined cases plus the full opinion. Cases without underlining are noted in brief only in the online edition, but will feature a link to the full opinion, if available on the Internet.

Arbitration Punishment Awards

Appellate court in Ohio overturns arbitrator's decision to reinstate a violent public employee. "Workplace safety is a well defined and dominant public policy based on federal, state, and common law."Akron Hous. Auth. v. Local 2517, AFSCME, 2005 Ohio 2965, 2005 Ohio App. Lexis 2764 (9th App. Dist. 2005).

Bargaining Unit Determinations

•••• Editor's Case Alert ••••

Massachusetts Labor Relations Commission opts to include student police cadets into the same bargaining unit as campus police officers. Univ. of Mass. and IBPO, #CAS-03-3563 (Mass. Lab. Rel. Cmsn. 2005).

Rejecting a union demand, the Massachusetts Labor Relations Commission declines to sever 10 part-time firefighters from a bargaining unit with 17 members. The part-time firefighters share a community of interest with the fulltime members. Town of Sturbridge and Prof. F/F of SFD, #CAS-04-3575 (Mass. Lab. Rel. Cmsn. 2005).

Certification Rights, Standards and Procedures

Texas Governor signs a Bill to help prevent "gypsy cops who jump from town to town because of poor performance or unethical behavior." H.B.2677, amending Texas Occupations Code §1701.451.

Civil Service

Illinois appellate court overturns the appointment of a jail director, because her name was not on the list of three candidates certified by the Corrections Board, and the law limits the sheriff's choices to those nominees. "If the sheriff has a problem with the statute, his complaint should be directed to the legislature." Read v. Sheahan, #1-041-04-3225, 2005 Ill. App. Lexis 683 (1st Dist. 2005).

Collective Bargaining - Duty to Bargain

Massachusetts Labor Relations Commission holds that a town improperly negotiated directly with a member of a bargaining unit and offered to create a light duty position, where no such assignment previously existed, and improperly terminated the officer when she refused the position. Town of Harwich and Harwich Police Feder., #MUP-01-2960 (Mass. Lab. Rel. Cmsn. 2005).

Contracts, Consultants and Outsourcing

Rhode Island Supreme Court enforces a police chief's three-year employment contract that was adopted shortly before a new administrator took office. Kells v. Town of Lincoln, #04-239, 874 A.2d 204 (2005).

Criminal Liability

Air Force MSGT sentenced to 42 months confinement for improper distribution of controlled promotional testing materials. U.S. v. Saafir (Ramstein A.F.B. Gen. Ct. Martial, 2005).

Disciplinary Appeals & Challenges

California appellate court holds, whether a disciplinary action is reviewed by an arbitrator or an administrative judge or a hearing officer, a public employer cannot require employees to share any of the cost that would not be incurred if the appeal was litigated in court. Florio v. City of Ontario, #E036598, 2005 Cal. App. Lexis 1091 (4th Dist. 2005).

Disciplinary Evidence -

Arbitrator acquits firefighter of sexual misconduct with a homeowner, who did not testify. The firefighter's denials could not be overcome by the chief's testimony about what the citizen allegedly told him. City of Minneapolis and IAFF L-82, 121 LA (BNA) 77 (Befort, 2005).

Disciplinary Punishment

Arbitrator upholds the termination of a private sector employee for extreme and repeated profanity combined with verbal threats and gestures ("I'm going to kick your ass," and "I'm going to knock the f--- out of you," etc.). Bell Helicopter Textron and UAW L-218, 120 LA (BNA) 1819 (Allen, 2005).

Discovery, Publicity and Media Rights

Connecticut Supreme Court holds that a town failed to meet its burden of showing that the public release of high-resolution aerial photos would compromise public security. Director of Technology, Town of Greenwich v. Freedom of Information Cmsn., #SC 17262, 274 Conn. 179, 2005 Conn. Lexis 218 (2005).

Equal Pay Laws

Because the cited positions were not similar, the plaintiff's unequal pay claim must fail. Her failure to promote claim also must fail because she rejected a promotion. Ingram v. Brink's, #04-2343, 2005 U.S. App. Lexis 14327 (1st Cir. 2005).

FLSA - Overtime - Canine Officers

Arbitrator holds that Customs inspectors and canine officers that are not covered by the Customs Officers Pay Reform Act [19 U.S. Code §267] are entitled to overtime pay under the FLSA. National Treas. Employees Union and U.S. Customs and Border Prot., 43 (2115) G.E.R.R. (BNA) 685 (Gootnick, 2005).

Family, Medical & Personal Leave

Dept. of Labor clarifies that ERISA and the FMLA do not preempt more generous state leave laws. Employee Benefits Security Admin. Advisory Opin. #2005-13A (2005).

Firearms/Weapons

Illinois Police Training Act is amended to authorize the state Training Board to conduct annual firearm certification courses for retired law enforcement officers that are qualified under federal law to carry a concealed weapon. The amendments provide that retired officers must authorize a criminal background investigation. S.B. 0189.

First Amendment Related

Judge jails a N.Y. Times reporter who wrote about the outing of an undercover CIA agent and subsequently refused to disclose her source to a federal grand jury. Miller v. U.S., 2005 U.S. Lexis 5190 and Cooper v. U.S., 2005 U.S. Lexis 5191 (2005).

Litigants and counsel have few, if any, First Amendment rights in a courtroom. "The courtroom is a nonpublic forum ... where the First Amendment rights of everyone ... are at their constitutional nadir." Mezibov v. Allen, #03-3973, 2005 U.S. App. Lexis 11341 (6th Cir. 2005).

Fraternization with Coworkers - Prohibitions on

National Labor Relations Board, in a 2-to-1 decision, upholds an employer's work rule that directs employees not to "fraternize on duty or off duty, date or become overly friendly with the client's employees or with co-employees." The rule was designed "to provide safeguards so that security will not be compromised by interpersonal relationships either between ... fellow security guards or between ... security guards and clients' employees." Guardsmark, LLC and Service Empl. Int. Union, L-24/7, #20-CA-31573-1, 344 NLRB No. 97 (NLRB 2005).

Free Speech

NLRB holds that an employer violated the federal law by having a work rule prohibiting employees from having "negative conversations" about their superiors. The Board concluded that employees could reasonably construe this rule to "bar them from discussing with their co-workers complaints about their managers that affect working conditions, thereby causing employees to refrain from engaging in protected activities." KSL Claremont Resort and Hotel Employees Union L-2850, #32-CA-20417, 344 NLRB No. 105 (NLRB 2005).

New York City fires an officer who has a website and blog, NYPD Rant, which is critical of management. The officer likened management to the Nazi Party and posted a photo of Hitler addressing storm troopers. When you clicked on a photo of the Commissioner it changed into Popeye, the cartoon character. In re Edward Polstein. Source: N.Y. Daily News (7/12/2005).

Handicap Discrimination - Specific Disabilities

•••• Editor's Case Alert ••••

Arbitrator rejects a disabilities defense for a corrections officer with sleep apnea. There was no showing that the condition caused her to oversleep and repeatedly report late to work. Fed. Bur. of Prisons and AFGE L-709, 120 LA (BNA) 1755, FMCS #04/53975 (Sellman 2005).

Handicap Discrimination - Inmates/Prisoners

Federal appeals court reinstates a suit brought by a wheelchair-bound plaintiff with muscular dystrophy that sued officers for excessive force for "attempting to place him in the back seat of a police cruiser after he explained that his legs could not bend." St. John v. Hickey, #04-3388, 2005 U.S. App. Lexis 11736 (6th Cir. 2005).

Homosexual & Transgendered Employee Rights

•••• Editor's Case Alert ••••

Federal court in Utah rejects a suit by a pre-op transsexual public employee who was terminated because of a lack of available unisex toilets. Etsitty v. Utah Transit Auth., #2:04CV616, 2005 WL 1505610, 2005 U.S. Dist. Lexis 12634 (D. Utah 2005).

Last Chance Agreements

Appeals court enforces a last chance agreement. Whether the grievant violated agency rules was not arbitrable. Municipal Employees Org. v. Penn Hills, #1219-CD-2004, 2005 Pa. Commw. Lexis 304 (Pa. Commw. 2005).

Pay Disputes

Arbitrator concludes, in a grievance related to longevity pay, that "years of service" means total service, and not uninterrupted, continuous service. City of Chehalis and Teamsters L-252, Wash. PERC Case #18589-A-04-1401 121 LA (BNA) 38 (Schwendiman, 2005).

Product Liability

Japanese manufacturer of Zylon ballistic vests offers $29 million to settle an Oklahoma class action lawsuit. Justice Dept. and others also have sued the manufacturer and distributor. The settlement satisfies class-action litigation in California, Louisiana, Michigan, Missouri, New Jersey, Oklahoma and West Virginia. Lemmings v. Second Chance, #CJ-2004-62 (Okla. Dist. Ct., Mayes Co., settled 2005).

State court jury in Missouri finds that Ford is not liable for the death of a state trooper who suffered fatal burns when his Crown Vic cruiser was struck from behind. Newton v. Ford Motor Co., No. 03CV-215678 (Mo., Jackson Co. Cir. Ct. 2005).

Retirement Rights and Benefits

New Illinois law penalizes any pension enhancements caused by balloon salary increases given during a worker's last year before retirement. S.B. 27, Illinois Pension Code Amendments (2005).

Armed park ranger was not entitled to a federal law enforcement officer pension; duties such as maintaining order, protecting life and property are not the type of law enforcement duties that qualify an employee for LEO service credits under 5 C.F.R. §831.902. Fagergren v. Dept. of the Interior, 2005 MSPB Lexis 3240 (MSPB 2005).

Sexual Harassment

Eighth Circuit rejects a hostile work environment sexual harassment and constructive discharge claim, where the plaintiff, a state employee, failed to show that the harassment was severe and pervasive enough to alter her employment. Tatum v. Arkansas Dept. of Health, #04-3543 2005 U.S. App. Lexis 11745 (8th Cir. 2005).

Union's Duty of Fair Representation

A public employee could not bring a malpractice action against the attorney provided by his union during his disciplinary hearing; "the union is ultimately responsible to the employee for any deficiency in the performance of the legal service," not the attorney hired by the union. Weiner v. Beatty, #39605, 113 P.2d 313, 2005 Nev. Lexis 28 (2005).

Summaries from the September 2005 Jail and Prisoner Law Bulletin

The online edition has a featured article on all underlined cases plus the full opinion. Cases without underlining are noted in brief only in the online edition, but will feature a link to the full opinion, if available on the Internet.

Access to Courts/Legal Info

Trial court did not abuse its discretion in refusing to provide plaintiff inmate with an appointed lawyer in his lawsuit claiming excessive use of force against him. Shabazz v. Felsnik, No. 04-2367, 129 Fed. Appx. 726 (3rd Cir. 2005).

AIDS Related

Prisoner who failed to allege any actual injury or pervasive risk of injury was not entitled to an injunction against a prison policy allowing inmates infected with HIV, Hepatitis B or Hepatitis C to work in the prison food services. Jacob v. Clarke, 129 Fed. Appx. 326 (8th Cir. 2005).

Drugs and Drug Screening

Prisoner was entitled to a judicial review of a disciplinary report concerning his alleged drug use after asserting that his urine sample was switched with that provided by his cell mate for purpose of the drug test. Henderson v. Crosby, 891 So. 2nd 1180 (Fla. App. 2nd Dist. 2005).

First Amendment

Requiring prisoner who had filed numerous frivolous grievances to have his grievances screened by a grievance coordinator for frivolousness before allowing them to be filed did not violate his First Amendment rights or deny him access to the courts. Walker v. Michigan Department of Corrections, #04-1347, 128 Fed. Appx. 441 (6th Cir. 2005).

Inmate Funds

Prisoner could not pursue federal civil rights lawsuit challenging the county jail's deduction of a subsistence fee from his prisoner account when his claim did not challenge the constitutionality of the state regulation allowing such a deduction, but merely the application of the regulation to him, which was an issue of state law. Cruz v. Aladro, No. 04-14671, 129 Fed. Appx. 549 (11th Cir. 2005).

Iowa statute allowing county sheriff to charge a convicted prisoner for room and board while in custody was not a violation of due process, equal protection, or the constitutional separation of powers. State v. Abrahamson, 696 N.W.2d 589 (Iowa 2005).

Medical Care

California health care manager was not entitled to qualified immunity in lawsuit by prisoner with Hepatitis C claiming that a one year delay in providing a liver biopsy after it was approved constituted deliberate indifference to his serious medical needs. Tatum v. Winslow, 122 Fed. Appx. 309 (9th Cir. 2005).

Cost alone, federal trial court holds, could not be a basis for denying a California prisoner evaluation for a possible liver transplant when state medical programs did provide such care for non-incarcerated indigent citizens. Rosado v. Alameida, No. 03CV1110, 349 F. Supp. 2d 1340 (S.D. Cal. 2004).

Doctor's alleged failure to follow an orthopedist's recommendation that a prisoner be referred to a physical therapist in order to prevent his osteoporosis from progressing could only have, at most, amounted to negligence, and could not be the basis for a federal civil rights lawsuit for deliberate indifference to a serious medical need. Faison v. Rosado, No. 04-14315, 129 Fed. Appx. 490 (11th Cir. 2005).

The mere claim that the prisoner suffered "excruciating pain" from an ankle injury was not sufficient to show deliberate indifference to a serious medical need, when the record showed that the injury was not one requiring immediate medical attention, and that he was treated for foot and ankle problems at least once a week for a month before and after the alleged injury, and provided with housing and work restrictions accommodating his condition. Day v. Massingill, No. 04-40500, 129 Fed. Apx. 124 (5th Cir. 2005).

Prisoner's claim that there was a four-day delay in providing him with treatment for an injury after he fell in a jail's shower, at most, showed negligence, and not a basis for a federal constitutional claim. Dowty v. Tarrell, No. CIV.04-5028, 368 F. Supp. 2d 1024 (D.S.D. 2005).

Prison officials did not show deliberate indifference to prisoner's health based on a one and one-half day delay between his first complaining of "flue-like" symptoms and his diagnosis of and treatment for pneumonia. Wynn v. Mundo, No. 1:04CV365, 367 F. Supp. 2d 832 (M.D.N.C. 2005).

13-day alleged delay in providing inmate with aspirin for his headache, by itself, did not constitute deliberate indifference to a serious medical need sufficient for a federal civil rights claim. Negron v. Gillespie, 111 P.3d 556 (Colo. App. 2005).

Prison and Jail Conditions: General

Inmate's allegation that his cell was constantly illumination could constitute a valid Eighth Amendment claim, depending on how bright the light was. Constant illuminate may be a civil rights violation if it "causes sleep deprivation or leads to other serious physical or mental health problems." King v. Frank, No. 04-C-338, 328 F. Supp. 2d 940 (W.D. Wis. 2004).

Prison Litigation Reform Act: Exhaustion of Remedies

Lawsuit challenging the conditions of inmate's confinement at two federal facilities was properly dismissed because he failed to exhaust available administrative remedies. Patel v. Fleming, No. 04-6266, 2005 U.S. App. Lexis 14654 (10th Cir.)

Prisoner did not fail to properly exhaust available administrative remedies on religious freedom claim. While the issue of the alleged untimeliness of his grievance was raised in the administrative process, correctional officials principally rejected his grievance on its merits. Conyers v. Abitz, No. 04-1630 2005 U.S. App. Lexis 15130 (7th Cir.).

Prison Litigation Reform Act: "Three Strikes Rule"

Civilly committed Illinois sex offender is subject to the "three strikes rule" of the Prison Litigation Reform Act (PLRA) barring him from filing further civil rights lawsuits as a pauper after three such lawsuits have been found to be frivolous. Ring v. Knecht, 130 Fed. Appx. 51 (7th Cir. 2005).

Prisoner Assault: By Inmates

County jail detainee beaten and raped by fellow prisoners showed factual issues as to whether county sheriff had acted with deliberate indifference to the risk of assaults by housing him with detainees with records of prior violence. Merriweather v. Marion County Sheriff, 368 F. Supp. 2d 875 (S.D. Ind. 2005).

Prisoner Assault: By Officers

Claim that prison guards "verbally abused" prisoner by cursing at him was insufficient to support a federal civil rights claim. Perry v. Kramer, 121 Fed. Appx. 191 (9th Cir. 2005).

Prisoner Death/Injury

New York Court of Claims upholds award of $350,000 for conscious pain and suffering to estate of deceased inmate who died of a prescription drug overdose in case where prison

officials were found to have been negligent in allowing him to have more than one pill at a time in his cell. Arias v. State of New York, No. 97942, 795 N.Y.S.2d 855 (Ct. Cl. 2005).

Prisoner Discipline

Prisoner did not have a due process right to have a chemical analysis done of the tobacco seized from his cell prior to a disciplinary proceeding for possessing contraband. Burks-Bey v. Vannatta, 130 Fed. Appx. 46 (7th Cir. 2005).

Disciplinary conviction of prisoner for alleged attempted assault on prison staff member was supported by "some evidence." Hearing officer's refusal to view a surveillance videotape taken during the incident did not violate the prisoner's due process rights when there was no indication that any portion of the videotape showed what happened inside the prisoner's cell. Neal v. Casterline, 129 Fed. Appx. 113 (5th Cir. 2005).

Religion

Prison regulation limiting inmates to a total of 15 books in their cells did not violate the religious freedom rights of a Shiite Muslim, and applied equally to prisoners of all religions. Neal v. Lewis, No. 04-3324, 2005 U.S. App. Lexis 14105 (10th Cir.).

•••• Editor's Case Alert ••••

Native American inmate was improperly denied an injunction against California hair grooming policy which failed to provide a religious exemption to short hair requirement. Correctional officials failed to adequately show that this was the least restrictive means of achieving compelling interests in prison security. Warsoldier v. Woodford, No. 04-55879, 2005 U.S. App. Lexis 15599 (9th Cir.).

Prison's failure to appoint or hire an individual that met an Indian chief's requirements for conducting "sacred sweat lodge ceremonies" was not a violation of Native American inmates' civil rights. Court also finds that the 1st Amendment prohibited the state prison from adopting requested policies preventing non-Native Americans from attending sweat lodge ceremonies, as non-Native Americans had a right to practice that religion. Brown v. Schuetzle, 368 F. Supp. 2d 1009 (D.N.D. 2005).

Prisoner's allegation that facility improperly excluded the Philadelphia Church of God from an authorized religious vendor list from which he could obtain religious publication stated a claim for violation of the 1st Amendment when there was nothing to show that the organization was not a legitimate church. Figel v. Overton, 121 Fed. Appx. 642 (6th Cir. 2005).

Segregation: Administrative

Placement of pre-trial detainee in solitary confinement for two days without a prior hearing did not violate due process. Holly v. Woolfolk, No. 03-2448, 2005 U.S. App. Lexis 14427 (7th Cir).

Sexual Assault

Prison administrators were not shown to have acted with deliberate indifference to the risk of sexual assaults by male guards on female inmates when they investigated 6 incidents occurring 4 years, resulting in the firing and prosecution of 5 guards. Heggenmiller v. Edna Mahan Correctional Institution for Women, 128 Fed. Appx. 240 (3rd Cir. 2005).

Lawsuit against Texas county by female prisoners who claimed that guards subjected them to sexual assault and harassment was improperly dismissed by lower court. Prisoners' claims that the county knew or should have known that security cameras in the facility were non-functioning and improperly placed, and that aspects of the layout of the facility permitted guards to have unlimited, unmonitored access to prisoners to facilitate assaults and harassment was sufficient to come within a waiver of governmental immunity for premises defects. Campos v. Nueces County, 162 S.W.3d 778 (Tex. App. 2005).

Sexual Harassment

•••• Editor's Case Alert ••••

Female prison employees' claim that male warden gave favorable treatment to other female employees with whom he was having sexual affairs, while they were retaliated against when they complained, was sufficient, under California law, to create a viable case of sexual harassment. Miller v. Dept. of Corrections, No. S114097, 2005 Cal. Lexis 7606 (2005).

Smoking

Mere negligence at times in enforcing correctional facility's no-smoking policies, even if true, was insufficient to impose liability on warden and assistant warden for deliberate indifference to prisoner's alleged excessive exposure to tobacco smoke. Kelley v. Hicks, 400 F.3d 1282 (11th Cir. 2005).

Telephone Access

Prisoner's lawsuit against federal prison warden reinstated on claims that his rights were violated by prohibition on him calling his stockbroker to order that stock be sold if the price started falling. King v. Fed. Bureau of Prisons, No. 03-2431, 2005 U.S. App. Lexis 14092 (7th Cir.).

Therapeutic Programs

State prison's requirement that inmate participate in anger management class did not violate his due process or equal protection rights, or constitute an impermissible retroactive enhancement of his punishment. Stewart v. Lehman, No. 04-35342, 129 Fed. Appx. 357 (9th Cir. 2005).

Sign up for e-mail notification that next month's AELE publications are online: www.aele.org/e-signup.html

«««««««««««««««««««««««»»»»»»»»»»»»»»»»»»»»»»»»