COMPENDIUM OF THE LAW ON PRISONERS' RIGHTS

SUPPLEMENT
February 2, 1981

By: Ila Jeanne Sensenich
United States Magistrate
Western District of
Pennsylvania

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

I. CIVIL RIGHTS STATUTES: JURISDICTION

42 U.S.C. SECTION 1983

Maine v. Thiboutot, ____ U.S. ____, 100 S.Ct. 2502 (1980) ("And laws" in 42 U.S.C. Section 1983 not limited to laws relating to civil rights and equal protection).

42 U.S.C. SECTION 1981

See 15 Harvard Civil Rights - Civil Liberties Law Review #1, Spring 1980, p. 29 "Developments in the Law Section 1981."

Fiedler v. Marumsco Christian Sch., 631 F.2d 1144 (4th Cir. 1980). (White person can sue under Section 1981).

42 U.S.C. SECTION 1985(3)

Conclusory allegations of conspiracy insufficient. Robinson v. McCorkle, 462 F.2d 111, 113 (3d Cir. 1972), cert. denied, 409 U.S. 1042, 93 S.Ct. 529, 34 L.Ed.2d 492 (1972).

Bethel v. Jendoco Constr. Corp., 570 F.2d 1168 (3d Cir. 1978).

18 U.S.C. SECTION 1343(3)

Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 99 S.Ct. 1905, ____ L.Ed.2d ____ (1979).

Maine v. Thiboutot, supra.

II. GENERAL CONSIDERATIONS: CIVIL RIGHTS AND HABEAS CORPUS COMPARED

A. Determination Whether Action is Habeas Corpus or Civil Rights.

Showing of unconstitutional conditions of confinement in violation of the Eighth Amendment will not entitle a prisoner to release from custody. His appropriate remedy is injunctive relief, Cook v. Hansberry, 596 F.2d 658 (5th Cir. 1979), cert. denied, ____ U.S. ____, 99 S.Ct. 2866, ____ L.Ed 2d ____ (1979); Crawford v. Bell, 599 F.2d 890 (9th Cir. 1979) n. 1, citing Bell v. Wolfish.

Civil Rights action for damages can go forward while prisoner exhausting state remedies as to habeas issues, Smallwood v. Mo. Bd. of Probation and Parole, 587 F.2d 369 (8th Cir. 1978).

Challenge to denial of admission to home furlough program is civil rights rather than habeas. Thomas v. Julius, ____ F.2d ____ (3d Cir. 6/30/1980).

Complaint seeking release from administrative segregation allegedly imposed without due process - habeas rather than Section 1983 (dictum). Streeter v. Hopper, 618 F.2d 1178 (5th Cir. 1980).

Action seeking procedures for release on home furlough program, etc., improperly treated as habeas rather than civil rights. Wright v. Cuyler, 624 F.2d 455 (3d Cir. 1980).

Action for new parole release hearing was habeas. Brown v. Vermillion, 593 F.2d 321 (8th Cir. 1979).

Action challenging disciplinary proceedings which resulted in loss of good time credits was habeas. Johnson v. Hardy, 601 F.2d 172 (5th Cir. 1979).

Action challenging manner in which good time credits were lost was habeas. Keenan v. Bennett, 613 F.2d 127 (5th Cir. 1980).

II. A. (Continued)

District court erred in dismissing as habeas corpus rather than civil rights complaint seeking money damages for alleged violation of plaintiff's constitutional rights in their extradition proceedings. Ross v. Detective Meagan, ____ F.2d ____ (3d Cir. 1/16/1981).

In action seeking damages for violation of 4th Amendment in arresting plaintiff without warrant, plaintiff was required first to present his claim to state courts, under exhaustion requirement of 28 U.S.C. Section 2254. After exhausting state remedies he may be able to bring 1983 action for damages in federal court, but defendants may be able to invoke collateral estoppel as an affirmative defense. Delaney v. Giarruso, 633 F.2d 1126 (5th Cir. 1981).

II. C. Exhaustion of Remedies

Ehlers v. City of Decatur, 614 F.2d 54 (5th Cir. 1980).

Federal prisoners are required to exhaust administrative remedies, Lane v. Hansberry, 593 F.2d 648 (5th Cir. 1979); Antonelli v. Ralston, 609 F.2d 340 (8th Cir. 1979). This applies even when they are requesting money damages, Brice v. Day, 604 F.2d 664 (10th Cir. 1979).

Limited exhaustion requirement. Hanson v. Circuit Court of First Judicial Circuit, 591 F.2d 404 (7th Cir. 1979).

"[W]e therefore hold that plaintiff's Section 1983 action insofar as it concerns the alleged illegal arrest, should be stayed pending final determination in the state court system of the charge resulting from that arrest." Landrigan v. City of Warwick, 628 F.2d 736, 743 (1st Cir. 1980).

II. D. Representation by Counsel; Attorney's Fees Awards Act of 1976

Konczuk v. Tyrrell, 603 F.2d 13 (7th Cir. 1979).

Appointment of counsel under Section 1915(d), Watson v. Moss, 619 F.2d 775 (8th Cir. 1980) (No constitutional right to appointment of counsel or to effective assistance of counsel); Only to be exercised under exceptional circumstances. Aldabe v. Aldabe, 616 F.2d 1089, 1093 (9th Cir. 1980).

No right to counsel in 1983 cases, Bethea v. Crouse, 417 F.2d 504 (10th Cir. 1969); McBride v. Soos, 594 F.2d 610 (7th Cir. 1979).

District court to appoint counsel. Stringer v. Rowe, 616 F.2d 993 (7th Cir. 1980); Murrell v. Bennett, 615 F.2d 306 (5th Cir. 1980); Holmes v. Goldin, d615 F.2d 83 (2d Cir. 1980); Almond v. Kent, 457 F.2d 200 (4th Cir. 1972); Manning v. Lockhart, 623 F.2d 536, 540 (8th Cir. 1980); Spates v. Manson, 619 F.2d 204 (2d Cir. 1980).

Approval of appointment of counsel by federal magistrate. Knighton v. Watkins, 616 F.2d 795 (5th Cir. 1980) (Fee awarded by magistrate inadequate).

Pro se litigant (paralegal) not entitled to attorney fee. Davis v. Parratt, 608 F.2d 717 (8th Cir. 1979).

No right to be represented by jail house lawyer, Thomas v. Estelle, 603 F.2d 488 (5th Cir. 1979); Criminal defendant has no right to be represented by lay counsel, United States v. Wilhelm, 570 F.2d 461 (3d Cir. 1978).

Comment, Attorney's Fees in Damage Actions Under The Civil Rights Attorney's Fees Awards Act of 1976, 47 U. Chi. L. Rev. 332 (1980).

II. D. (Continued)

Identifying prevailing party. Hanrahan v. Hampton, 446 U.S. 754 (1980); Maher v. Gagne, ____ U.S. ____, 100 S.Ct. 2570, ____ L.3d 2d ____ (1980)(consent decree); Knighton v. Watkins, 616 F.2d 795 (5th Cir. 1980); Nadeau v. Helgemae, 581 F.2d 275 (1st Cir. 1978); Morrison v. Ayoob, 627 F.2d 669 (3d Cir. 1980); Battle v. Anderson, 614 F.2d 251 (10th Cir. 1980); Harris v. Fort Myers, 624 F.2d 1321 (5th Cir. 1980)(consent decree); Williams v. Aliato, 625 F.2d 845 (9th Cir. 1980); Bagby v. Beal, 606 F.2d 411 (3d Cir. 1979)(plaintiff was prevailing party although appeal was dismissed as moot because the defendant had complied with the injunction and plaintiff had received the relief sought).

Includes fees for appeal, Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979), rev. in part, Hanrahan v. Hampton, 446 U.S. 754 ____ S.Ct. ____, ____ L.Ed 2d ____ (1980).

Order that award to be paid individually by the defendant affirmed, McNamara v. Moody, 606 F.2d 621 (th Cir. 1979).

Attorney fee allowed where plaintiff prevailed on pendant nonconstitutional claim, Lund v. Affleck, 587 F.2d 75 (1st Cir. 1978).

Counsel fees against the state, Williams v. Alioto, 625 F.2d 845 (9th Cir. 1980).

Eleventh Amendment no bar, Maher v. Gagne, ____ U.S. ____, 100 S.Ct. 2570, ____ L.Ed 2d ____ (1980).

Attorney fee for representation in administrative and judicial proceedings prior to federal action, New York Gaslight Club, Inc. v. Carey, ____ U.S. ____, 100 S.Ct. 2024, ____ L.Ed 2d ____ (1980).

Attorney fee not barred by judicial immunity where judge also sued in official capacity, Morrison v. Ayoob, 627 F.2d 669 (3d Cir. 1980).

District court to proceed to award attorney's fees after appeal taken, Terket v. Lund, 623 F.2d 29 (7th Cir. 1980).

II. D. (Continued)

Public interest lawyers to be compensated same way as private practitioners, Palmigiano v. Garrahy, 616 F.2d 598, 601 (1st Cir. 1980); Leeds v. Watson; 630 F.2d 674 (9th Cir. 1980). See also Dennis v. Chang, 611 F.2d 1302 (9th Cir. 1980); David v. City of Scranton, ____ F.2d ____ (3d Cir. 10/29/1980).

Where the state officials expressed intent not to pay attorney fees awarded against state, the district court properly ordered the state auditor to issue a warrant upon the state treasurer directing the treasurer to satisfy the judgment for attorney fees and costs. The court also properly awarded interest on the attorney fees. (State law prohibited satisfaction of a judgment against the state except by appropriation by the legislature.) Gates v. Collier, 616 F.2d 1268 (5th Cir. 1980).

Good faith no bar to attorney fees where defendants sued in official capacity, Williams v. Alioto, 625 F.2d 845 (9th Cir. 1980).

Section 1988 applies to all types of 1983 cases - even those not based on constitutional violations, Maine v. Thiboutot, ____ U.S. ____, 100 S.Ct. 2502, ____ L.Ed 2d ____ (1980).

Attorney fee for defendant, Bowers v. Kraft Foods Corp., 606 F.2d 816 (8th Cir. 1979); Hughes v. Repko, 578 F.2d 483 (3d Cir. 1978).

Award of attorney's fees and costs to defendants improper where plaintiff's complaint was dismissed for failure to state a claim and court of appeals found plaintiff did not establish personal jurisdiction over out of state defendants. Webber v. Michela, 633 F.2d 578 (8th Cir. 1980).

The degree to which party prevailed to be considered, Jones v. Diamond, 594 F.2d 997, 1027 (5th Cir. 1979).

Lodestar, Walker v. Robbins Hose Co. #1 Inc., 622 F.2d 692 (3d Cir. 1980).

II. D. (Continued)

Attorney's fee for time spent litigating attorney fee, Bagby v. Beal, 606 F.2d 411 (3d Cir. 1979); Knighton v. Watkins, 616 F.2d 795 (5th Cir. 1980); David v. City of Scranton, 633 F.2d 676 (3d Cir. 1980).

Judgment relating to attorney's fees vacated and remanded for further consideration, Furtado v. Bishop, 604 F.2d 80 (1st Cir. 1979).

Section 1988 applicable to cases pending at time of its passage, McNamara v. Moody, 606 F.2d 621 (5th Cir. 1979). Eleventh Amendment no bar, Corpus v. Estelle, 605 F.2d 175 (5th Cir. 1979).

Attorney's fee awarded where a common benefit is conferred by the recovery of a fund or property, Boeing v. Van Gemert, 444 U.S. 472, 100 S.Ct. 745, ____ L.Ed 2d ____ (2/19/1980).

No attorney's fee to be awarded against judges, Supreme Court of Va. v. Consumer's Union of the United States, ____ U.S. ____, 100 S.Ct. 1967, ____ L.Ed 2d ____ (6/2/1980).

II. E. Obtaining the Presence of Plaintiff and His Witnesses

No error in denying writ of habeas corpus to produce witness in federal witness protection program. Trial subpoena properly quashed because served more than 100 miles from the district. Absence from trial did not result from restriction imposed by marshal, Beard v. Mitchell, 604 F.2d 485 (7th Cir. 1979).

Court did not error in requiring marshal to reimburse state for cost of transporting state prisoner to federal court, Ford v. Carballo, 577 F.2d 404 (7th Cir. 1978).

District court erred in refusing to bring another inmate as a witness where credibility was a critical issue and district judge misrepresented the offer with respect to the witness' testimony. Manning v. Lockhart, 623 F.2d 536 (8th Cir. 1980).

"A district court will be reversed when its refusal to issue the writ [of habeas corpus ad testificandum] constitutes an abuse of its discretion in weighing these criteria." Jerry v. Francisco, 632 F.2d 252 (3d Cir. 1980).

Court can order the government to pay witness fees, Morrow v. Igleburger, 584 F.2d 767, 772, n. 7 (6th Cir. 1978)(dictum)(Here no abuse of discretion in refusal).

II. G. Amendments to Complaint

Improper to permit amendment to identify a defendant against whom the statute of limitations has expired. Wood v. Worachek, 618 F.2d 1225 (7th Cir. 1980)(Amendment did not comply with Rule 15, F.R.C.P.).

See Phillips v. Purdy, 617 F.2d 139 (5th Cir. 1980). (Amendment to be considered to substitute proper defendant).

Pro se plaintiff should be liberally permitted to amend complaint, Holmes v. Goldin, 615 F.2d 83 (2d Cir. 1980); Gillespie v. Civiletti, 629 F.2d 637, 640 (9th Cir. 1980).

In Fifth Circuit complaint can be amended as a matter of course after motion to dismiss is filed, before answer, McGruder v. Philps, 608 F.2d 1023 (5th Cir. 1979)(Motion to dismiss is not a responsive pleading for purposes of Rule 15(a)).

District court abused its discretion in denying plaintiff's motion for leave to amend complaint, Ross v. Detective Meagan, ____ F.2d ____ (3d Cir. 1/16/1981).

II. I. Jury Trial

Indication on the civil cover sheet that a jury trial is demanded is not a substitute for service of written notice on the defendant, Omawale v. WBZ, 610 F.2d 20 (1st Cir. 1979).

District court did not err in denying defendant's tardy motion for a jury trial, Carter v. Noble, 526 F.2d 677, 678, n. 1 (5th Cir. 1976).

District court improperly tried case by affidavits. Complaint had demanded a jury trial. Dolence v. Flynn, 628 F.2d 1280 (10th Cir. 1980).

III. ROLE OF THE MAGISTRATE

Failure to file objections to magistrate's report and recommendation may constitute waiver, United States v. Bullock, 590 F.2d 117, No. 78-5252 (5th Cir. 1979); Calderon v. Waco Lighthouse for the Blind, ____ F.2d ____, No. 78-3748 (5th Cir. 11/13/1980).

District court erred in making findings of fact based on hearing before magistrate where magistrate had filed no report to which the parties could file objections. In a concurring opinion Judge Swygert concluded that since plaintiff was seeking damages for the loss of his property resulting from a single incident that occurred in the prison, the case did not involve "conditions of confinement" and therefore it could not be assigned to the magistrate under 28 U.S.C. Section 636(b)(1)(B). Hill v. Jenkins, 603 F.2d 1256 (7th Cir. 1979).

Findings of magistrate adopted by district judge and affirmed on appeal, Raffone v. Robinson, 607 F.2d 1058 (2d Cir. 1979).

Hearing by magistrate, different findings by judge based on record before magistrate, Orpiano v. Johnson, 632 F.2d 1096 (4th Cir. 1980).

District judge can constitutionally make findings of fact based on hearing before magistrate without conducting a new hearing (motion to suppress), United States v. Raddatz, ____ U.S. ____, 100 S.Ct. 2406, ____ L.Ed 2d ____ (1980). However the judge cannot make credibility findings inconsistent with the findings of the magistrate without conducting a new hearing. Louis v. Blackburn, 630 F.2d 1105 (5th Cir. 1980).

But where credibility of a witness is in issue he must read a transcript or listen to a tape recording of the testimony of the witness, Calderon v. Waco Lighthouse For The Blind, ____ F.2d ____, No. 78-3748 (5th Cir. 1981).

III. (Continued)

Appeal failed to challenge referral to magistrate for trial under 28 U.S.C. Section 636 authorizing magistrates to hear prisoner petitions challenging the conditions of confinement although the action was against law enforcement officers and challenged his arrest, rather than conditions of confinement. Delaney v. Giarruso, 633 F.2d 1126, 1127, n. 1 (1981).

IV. FORMA PAUPERIS PETITIONS

Forma pauperis determination should be based solely on financial considerations, Boyce v. Alizaduh, 595 F.2d 948 (4th Cir. 1979); Collins v. Hladky, 603 F.2d 824 (10th Cir. 1979); Collins v. Cundy, 603 F.2d 825 (10th Cir. 1979).

Prisoners with more than $75 in prison account required to pay filing fee. Twyman v. Crisp, 584 F.2d 352 (10th Cir. 1978).

Where the action is dismissed without service court should furnish a statement of reasons, Collins v. Cundy, 603 F.2d 825, 828 (10th Cir. 1979)(dictum).

V. ALTERNATIVES - DIRECTION OF SERVICE; AMENDMENT OF COMPLAINT: DISMISSAL AS FRIVOLOUS; REQUIRING INVESTIGATION OR SPECIAL REPORT

Clerk did not error in returning to plaintiff complaint which did not comply with local rules rather than responding to questions on form. Bradenburg v. Beuman, 632 F.2d 120 (10th Cir. 1980).

Although the complaint alleged only a violation of state law the plaintiff should have been granted leave to amend to allege a violation of federal rights, United States ex rel. Walker v. Fayette City, Pa., 599 F.2d 573 (3d Cir. 1979).

Where action against state defendants asserted jurisdiction under Federal Tort Claims Act, magistrate property treated it as a demand for relief under Section 1983, Henderson v. Fisher, 631 F.2d 1115 (3d Cir. 1980).

Complaint improperly dismissed based on report of defendant, Hurst v. Blackburn, 603 F.2d 586 (5th Cir. 1979).

Service of process depends on plaintiff's theory - official or individual capacity of defendant, Micklus v. Carlson, 632 F.2d 277 (3d Cir. 1980).

VI. FRIVOLOUS OR MALICIOUS TEST

Boyce v. Alizaduh, 595 F.2d 948 (4th Cir. 1979).

Mitchell v. Hicks, 614 F.2d 1016 (5th Cir. 1980).

Dismissal as frivolous improper, McTeague v. Sosnowski, 617 F.2d 1016 (3d Cir. 1980).

Phillips v. Purdy, 617 F.2d 139 (5th Cir. 1980)(ambiguous).

Dismissal as malicious, inter alia, affirmed. Gibson v. McEvers, 631 F.2d 95 (7th Cir. 1980).

VIII. REQUIREMENTS FOR A CAUSE OF ACTION UNDER 42 U.S.C. SECTION 1983

A. Action Under Color of State Law

Musso v. Suriano, 586 F.2d 59 (7th Cir. 1978).

Private citizens, Skipper v. Brummer, 598 F.2d 427 (5th Cir. 1979); Retained counsel, Jackson v. Salon, 614 F.2d 15 (1st Cir. 1980); Dunn v. Hackworth, 628 F.2d 1111 (8th Cir. 1980)(retained counsel also state juvenile officer - no state action); Housand v. Heiman, 594 F.2d 923 (2d Cir. 1979).

Public defender does act under color of state law, Dodson v. Polk County, 628 F.2d 1104 (8th Cir. 1980).

No tort claim against attorney under Section 1983 - Estelle standard adopted for attorneys, Brown v. Schiff, 614 F.2d 237 (10th Cir. 1980).

Brown v. Chaffee, 612 F.2d 497, 501 (10th Cir. 1979).

Conspiracies are cognizable under Section 1983 without the class based discrimination required for a cause of action under 42 U.S.C. Section 1985. Crowe v. Lucas, 595 F.2d 985, 990 (5th Cir. 1979).

Immunity of state officer does not bar action against private conspirator. Dennis v. Sparks, ____ U.S. ____, ____ S.Ct. ____, ____ L.Ed 2d ____ (11/17/1980).

Federal officials who conspire with state officers can be held liable, Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979).

No state action where plaintiff's employer gave information to police, Butler v. Goldblatt Bros. Inc., 589 F.2d 323 (7th Cir. 1978).

Liability of private citizens who conspired with state officers, Lopez v. Vanderwater, 620 F.2d 1229 (7th Cir. 1980); Lel Fundi v. DeRoche, 625 F.2d 195 (8th Cir. 1980).

VIII. A. (Continued)

Presence of law enforcement officers during repossession of plaintiff's car did not constitute state action, Menchaca v. Chrysler Credit Corp., 613 F.2d 507 (5th Cir. 1980).

Campus police officers of the University of Pittsburgh were acting under color of state law, Henderson v. Fisher, 631 F.2d 1115 (3d Cir. 1980).

Off duty police officer acting under color of state law, Layne v. Sampley, 627 F.2d 12 (6th Cir. 1980).

Federal prisoner temporarily placed in county jail, Loe v. Armistead, 582 F.2d 1291 (4th Cir. 1978); Owens v. Haas, 601 F.2d 1242 (2d Cir. 1979)(plaintiff may be able to bring action as beneficiary of federal contract with county).

VIII. B. The Defendant Must be a "Person"

Police Department is a "person" under Monell, Dominguez v. Beame, 603 F.2d 337 (2d Cir. 1979).

VIII. C. Challenges to the Conditions of Confinement as Constitutional Violations - General Considerations

"The district court, we believe, got off on the wrong foot in this case by not giving appropriate deference to the decisions of prison administrators and appropriate recognition to the peculiar and restrictive circumstances of penal confinement." Jones v. N. C. Prisoners Union, 433 U.S. 119, 125, ____ S.Ct. ____, ____ L.Ed 2d ____ (1977).

"In our view, the Court of Appeals failed to heed its own admonition not to 'second-guess' prison administrators." Bell v. Wolfish, 441 U.S. 520, 545, 99 S.Ct. 1861, 1877, ____ L.Ed 2d ____ (1979).

"[T]he problems that arise in the day to day operation of a corrections facility are not susceptible of easy solutions. Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Bell v. Wolfish, supra, 441 U.S. at 547, 99 S.Ct. at 1878.

Considerations of institutional security - burden of proof, St. Claire v. Cuyler, ____ F.2d ____ (3d Cir. 1176/1980).

VIII. D. Supervisory Personnel: Respondeat Superior, Personal Involvement, Non-feasance

See Comment, Section 1983 Municipal Liability and the Doctrine of Respondeat Superior, 46 U. Chi. L. Rev. 935 (1979).

3. Second Circuit

Supervisor may be liable where his employees were carrying out his policies, Taylor v. Magone, 626 F.2d 247, n. 2 (2d Cir. 1980).

Failure of municipality's supervisory officials to act may constitute policy giving rise to liability of municipality, Turpin v. Mailet, 619 F.2d 196 (2d Cir. 1980).

4. Third Circuit

"The liability of supervisory prison personnel under Section 1983 turns on whether the prisoner complains about a sporadic incident which may be beyond the control of a supervisor, or about general conditions and policies properly within the supervisory purview of the officer in charge of the prison." Jerry v. Francisco, 632 F.2d 252, 256 (3d Cir. 1980)(concurring opinion of Adams, J.)(under state law the warden is charged with taking care of the prisoner in a jail under his supervision).

"Under the Supreme Court's decisions in Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed 2d 561 (1976), and Department of Social Services v. Monell, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed 2d 611 (1978), the 'mere right to control without any control or direction having been exercised and without any failure to supervise is not enough to support Sec. 1983 liability.'" D'Iorio v. County of Delaware, 592 F.2d 681, 690, n. 15 (3d Cir. 1978).

VIII. D. 5. Fourth Circuit

Failure to control subordinates, Davis v. Zahradnick, 600 F.2d 458 (4th Cir. 1979).

Judgment against supervisory officials reversed - no showing of pattern of activity. "[W]here prison supervisors with knowledge of 'a pervasive and unreasonable risk of harm' to the prisoners, fail to take reasonable remedial steps to prevent such harm, their conduct may be properly characterized as 'deliberate indifference' or as 'tacit authorization of the offensive acts' for which they may be held independently liable under Section 1983." Orpiano v. Johnson, 632 F.2d 1096 (4th Cir. 1980).

6. Fifth Circuit

Bogard v. Cook, 586 F.2d 399 (5th Cir. 1978); Whitehurst v. Wright, 592 F.2d 834 (5th Cir. 1979); Duncan v. Edwards, 600 F.2d 1069 (5th Cir. 1969); Watson v. Interstate Fire and Cas. Co., 611 F.2d 120 (5th Cir. 1980).

Baskin v. Parker, 602 F.2d 1205 (5th Cir. 1979) overruled earlier decisions of the Fifth Circuit which had looked to state law to determine whether vicarious liability doctrines would be applicable in actions under Section 1983. The Court determined that Monell v. Dept. of Social Services, 436 U.S. 658 (1978) had changed the law of the Fifth Circuit on vicarious liability under Section 1983. The court stated:

VIII. D. 6. (Continued)

> After parsing the language used in Section 1983 and tracing legislative history, the Monell Court concluded that the official sued (in that case the city government) could not be held liable unless action by the officer or pursuant to this official policy caused a constitutional tort. In other words, it rejected respondeat superior as a theory of recovery under Section 1983. We interpret Monell's ruling as uniformly applicable to Section 1983 action in any state . . . Adopting each state's law into Section 1983 would create a lex loci doctrine of respondeat superior granted or withheld, on the basis of state rather than federal policy.
>
> The language of the statute governing the remedies available in civil rights actions, 42 U.S.C. Sec. 1988, supports our conclusion that state vicarious liability doctrines are inapplicable to Section 1983 suits.

602 F.2d at 1208. Although the sheriff was not liable on the basis of vicarious liability the court found he might be liable because of his participation in obtaining the warrants and organizing the search party. The dismissal as to the sheriff was reversed and the district court was directed to make further findings of fact. However, Dailey v. Byrnes, 605 F.2d 885 (5th Cir. 1979), decided two months after Baskin, stated: "Where vicarious liability is sought against a sheriff under Section 1983, for the acts of his deputy, state law controls," 605 F.2d at 861.

Henzel v. Gerstein, 608 F.2d 654 (5th Cir. 1979)

Sheriff liable where deputies were following his policies in making night time search of home for person named in warrant. (Information as to address was wrong). Wanger v. Bonner, 621 F.2d 675 (5th Cir. 1980).

VIII. D. 6. (Continued)

McCollan v. Tate, 575 F.2d 509 (5th Cir. 1978), discussed in compendium rev'd, Baker v. McCollan, 443 U.S. 137, ____ S.Ct. ____, ____ L.Ed 2d ____ (1979).

7. Sixth Circuit

Coffy v. Multi-County Narcotics Bureau, 600 F.2d 570 (6th Cir. 1979); Wilson v. Beebee, 612 F.2d 275 (6th Cir. 1980).

8. Seventh Circuit

Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979).

Allegations that one supervisory official concurred with decisions concerning plaintiff and that the other one approved his transfer was sufficient to state a claim, Stringer v. Rowe, 616 F.2d 993 (7th Cir. 1980).

9. Eighth Circuit

Ronnei v. Butler, 597 F.2d 564 (8th Cir. 1979); DeShields v. United States Parole Com'n, 593 F.2d 354 (8th Cir. 1979).

No respondeat superior, Careaga v. James, 616 F.2d 1062 (8th Cir. 1980).

10. Ninth Circuit

May v. Enomoto, 633 F.2d 164 (9th Cir. 1980).

But see Johnson v. Duffy, 588 F.2d 740 (9th Cir. 1978), unless state law imposes liability, Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979).

VIII. D. 11. Tenth Circuit

McClelland v. Facteau, 610 F.2d 693 (10th Cir. 1980).

Clappier v. Flynn, 605 F.2d 519 (10th Cir. 1979) indicated that a warden could be liable in money damages for injuries sustained by a prisoner during a time when the warden was not present in the prison and was unaware of the attack on the plaintiff by other prisoners. The court stated:

> [T]he area of concern in terms of Sec. 1983 liability involving an allegation of cruel and unusual punishment relating to a claimed omission requires proof of exceptional circumstances and conduct so grossly incompetent, inadequate or excessive as to shock the conscience or to be intolerable to basic fairness. . . . Perhaps the degree of proof required . . . [for] claimed acts of omission constituting 'cruel and unusual punishment' is comparable to that required to support an award of exemplary or punitive damages.'

Id. at 533.

VIII. E. Constitutional Violations v. Tort - Negligence, Intent

Supreme Court declined to decide whether simple negligence could give rise to liability under Section 1983, Baker v. McCollan, 443 U.S. 137, 99 S.Ct. 2689, 61 L.Ed 2d 433 (1979)(Indicated it may depend on the precise constitutional violation alleged). See also Procunier v. Navarette, 434 U.S. 555, 98 S.Ct. 855, ____, L.Ed 2d ____ (1978).

In some cases negligence may be a basis for a Section 1983 claim, Withers v. Levine, 615 F.2d 158 (4th Cir. 1980)(failure by officials to protect prisoner from sexual assaults).

Holmes v. Goldin, 615 F.2d 83 (2d Cir. 1980) (ambiguous). Deliberate or callous indifference to constitutional rights required proof of simple negligence insufficent, Jones v. Diamond, 594 F.2d 997 (5th Cir. 1979); Thomas v. Estelle, 603 F.2d 488 (5th Cir. 1979).

Douthit v. Jones, 619 F.2d 527 (5th Cir. 1980); Fielder v. Bosshard, 590 F.2d 105 (5th Cir. 1979).

Bonner v. Coughlin, 545 F.2d 565 (7th Cir. 1976) (en banc), cited in compendium, cert. denied, 435 U.S. 932, 98 S.Ct. 1507, 55 L.Ed 2d 529 (1978).

Hampton v. Hanrahan, 600 F.2d 600, 625 (7th Cir. 1979).

Beard v. Mitchell, 604 F.2d 485 (7th Cir. 1979), referring to Bonner v. Coughlin, supra, stated "this court, in an en banc opinion, refused to recognize a cause of action premised on negligence, holding that intentional conduct or 'reckless disregard' was an essential element of a civil rights claim", 604 F.2d at 494. The court rejected plaintiff's argument that the Bonner standards were applicable only to claims arising under the Eighth Amendment. The court noted that both intent and culpability on the part of the defendant must be shown.

VIII. E. (Continued)

Complaint properly dismissed as frivolous where plaintiff alleged nothing more than negligent or inadvertent conduct. Ronnei v. Butler, 597 F.2d 564 (8th Cir. 1979).

Where 1983 action tried with state law tort based on same facts, plaintiff could not recover damages on both claims, Clappier v. Flynn, 605 F.2d 519 (10th Cir. 1979).

VIII. F. Extradition: Article IV, Section 2, Clause 1

See also 18 U.S.C. Sec. 3182.

Wirth v. Surles, 562 F.2d 319 (4th Cir. 1977), cited in compendium, cert. denied, 435 U.S. 933, 98 S.Ct. 1509, 55 L.Ed 2d 531 (1978).

Prior to removal to demanding state, the only remedy available to a prisoner is habeas corpus and he must first exhaust state court remedies. After his return to the demanding state, habeas corpus is not available but Section 1983 is. Where the plaintiff has been constitutionally convicted he must show more than mere noncompliance with the extradition statute to obtain compensatory damages. An allegation that the plaintiff was forcibly seized and transported states a claim. However, police officers do not have a duty to make a positive showing at a preliminary hearing in the demanding state that the extradition procedures were proper. Brown v. Nutsch, 619 F.2d 758 (8th Cir. 1980).

Courts of "asylum" state cannot inquire into prison conditions of the "demanding state." Governor's grant of extradition is prima facie evidence that the constitutional and statutory conditions have been met. Pacileo v. Walker, ____ U.S. ____, 101 S.Ct. 308, ____ L.Ed 2d ____ (12/8/1980).

VIII. G. First Amendment

1. General Considerations

Buise v. Hudkins, 584 F.2d 223 (7th Cir. 1978).

Wolfish v. Levi, 573 F.2d 118 (2d Cir. 1978), rev'd, Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, ____ L.Ed 2d ____ (1979).

Prison officials burden of going forward, St. Claire v. Cuyler, ____ F.2d ____ (3d Cir. 11/6/1980), petition for rehearing denied, ____ F.2d ____ (12/5/80).

> [T]he state needs only to produce evidence that to permit the exercise of first amendment rights would create a potential danger to institutional security. . . . [R]estrictions on First Amendment Rights may be deemed valid when prison officials, in the exercise of their informed discretion, conclude that there is a potential danger to security, even though the same showing might be unimpressive if submitted to justify restrictions upon members of the general public. . . . Once the state has met its burden of going forward with the evidence, the courts must defer to the expert judgment of the prison officials unless the prisoner proves by 'substantial evidence . . . that the officials have exaggerated their response' to security consideration, . . . or that their beliefs are unreasonable.

____ F.2d ____.

2. Restrictions on Mail Privileges

Inmate 'writ writer' sustained no damages when he was prohibited from corresponding with another inmate whom he was assisting with post-conviction relief and who had been transferred to another prison temporarily, Watts v. Brewer, 588 F.2d 646 (8th Cir. 1978).

VIII. G. 2. (Continued)

Complaint improperly dismissed where it challenged a state prison regulation providing that "absolutely nothing will be allowed to go from one inmate to another in the segregation units", Rudolph v. Locke, 594 F.2d 1076 (5th Cir. 1979).

Prison officials liable for nominal damages for refusing to mail plaintiff's letter to his girlfriend. The letter contained vulgar and possibly libelous comments about the prison mail censoring officer, McNamara v. Moody, 606 F.2d 621 (5th Cir. 1979).

Prison regulations relating to possession of photographs of nude women upheld; money damages denied, Trapnell v. Riggsby, 622 F.2d 290 (7th Cir. 1980).

b. Correspondence with Courts, Attorneys, and Public Officials

Dismissal of complaint alleging the defendant refused to mail legal correspondence affirmed. Collins v. Cundy, 603 F.2d 824 (10th Cir. 1979)(the court read the letter and was not convinced it fell within the scope of privileged mail entitled to constitutional protection under Procunier v. Martinez).

Money damage award against prison official for confiscating mail to a federal judge and a prison official affirmed, Furtado v. Bishop, 604 F.2d 80, 96 (1st Cir. 1979).

c. Published Materials

Wolfish v. Levi, 573 F.2d 118 (2d Cir. 1978), cited in compendium reversed, Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, ____ L.Ed 2d ____ (1979).

VIII. G. 2. c. (Continued

No error in banning issue of periodical on basis of security, Vodicka v. Phelps, 624 F.2d 569 (5th Cir. 1980).

Declaratory and injunctive relief properly denied where the district court found that the prison officials sincerely believed circulation of one particular issue of a prison magazine could be disruptive of prison order and security, and that their beliefs were reasonable. Pittman v. Hutto, 594 F.2d 407 (4th Cir. 1979).

VIII. G. 3. Restrictions on Visitors and Press Interviews

a. General Public and Family

No constitutional violation in suspending prisoner's future visiting rights for a limited period of time when he is found in possession of contraband immediately following a visit, White v. Keller, 588 F.2d 913 (4th Cir. 1978).

No error in refusing to let married woman visit plaintiff. Remand for reconsideration as to other visitors, Lynotti v. Henderson, 610 F.2d 340 (5th Cir. 1980).

Although pretrial detainees have a constitutional right to reasonable visitation, convicted criminals do not, with the exception of a right to visits from counsel. The visitation privileges for detainees should be set forth in written rules. Further, loss of visitation privileges up to two weeks can be used as punishment for infraction of the rules, Jones v. Diamond, 594 F.2d 997, 1013 (5th Cir. 1979).

Contact visits not constitutionally required, Jones v. Diamond, 594 F.2d 997, 1019 (5th Cir. 1979); Inmates of the Allegheny County Jail v. Peirce, 612 F.2d 754 (3d Cir. 1979)(pretrial detainees).

b. Interviews with Attorney's Aides and Investigators

No violation in exclusion of paralegal with criminal record, Phillips v. Bureau of Prisons, 591 F.2d 966 (D.C. Cir. 1979).

VIII. G. 3. d. Pretrial Detainees

i. Visitation privileges

Contact visits, Jones v. Diamond, 594 F.2d 997 (5th Cir. 1979); Marcera v. Chinlund, 595 F.2d 1231 (2d Cir. 1979); Jordan v. Wolke, 593 F.2d 772 (7th Cir. 1978) (district court erred in granting preliminary injunction requiring prison authorities to make changes enabling pretrial detainees to have contact visits). Same case, Jordan v. Wolke, 615 F.2d 749 (7th Cir. 1980)(court erred in granting injunction requiring contact visits).

Loss of visitation privileges up to two weeks can be used as punishment for infraction of the rules by pretrial detainees provided they are accorded minimum procedural due process. Jones v. Diamond, 594 F.2d 997, 1017 (5th Cir. 1979). They must be informed of the violation with which they stand charged and be given an opportunity informally to demonstrate that they are not guilty. However, a full-blown due process hearing is not required. Pretrial detainees have the right to written rules regarding visitation privileges.

4. Freedom of Religion

Chapman v. Pickett, 586 F.2d 22 (7th Cir. 1978) (Moslem required to handle pork).

No constitutional violation in denying prisoner use of prison chapel, Jones v. Bradley, 590 F.2d 294 (9th Cir. 1979).

VIII. G. 4. (Continued)

The district court erred in finding in non-jury trial that plaintiff was deprived of First Amendment rights relating to practice of religion. Based upon security considerations, the prison officials prohibited him from wearing his religious hat in the dining hall, refused to give him permission to pass through the main security gate wearing a turban and refused to provide a guard to escort him to religious services in general population. Burden of proof discussed. St. Claire v. Cuyler, ____ F.2d ____ (3d Cir. 11/6/80).

Allegation by Moslems that they were required to handle pork, contrary to their religious beliefs, stated a claim, Kenner v. Phelps, 605 F.2d 850 (5th Cir. 1979).

Jail officials required to take steps to insure that no inmate was subjected to forced religious indoctrination, Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980).

Remand for hearing on claims that plaintiff was prevented from participating in church worship services, bible study classes, from wearing long hair and beard as incident of exercise of his religion, and distributing religious literature, Green v. White, 605 F.2d 376 (8th Cir. 1979).

5. Other Cases on Freedom of Speech, Expression of Beliefs and Association and Assembly

Denial of Use of Photocopying privileges for distribution of documents to other prisoners constitutes censorship of a prisoner's speech and can constitute a First Amendment violation unless it furthers "an important or substantial governmental interest. . . unrelated to the suppression of free expression" and "the restriction must be no greater than is essential to the furtherance of that interest." Rhodes v. Robinson, 612 F.2d 766, 770 (3d Cir. 1979)(making photocopying prohibitively expensive in order to make a profit could constitute a First Amendment violation).

VIII. G. 5. (Continued)

A prisoner has no right to conduct a business (selling health foods). French v. Butterworth, 614 F.2d 23 (1st Cir. 1980).

Where a prisoner had an alternative means for expressing grievances, his Constitutional rights to free expression were not violated by requiring him to remove his name from a mass petition protesting prison conditions, Nickens v. White, 622 F.2d 967 (8th Cir. 1980).

VIII. H. Fourth Amendment

1. Arrest or Search

a. Private Citizens

Night time search of home allegedly of misdemeanant, with arrest warrant but no search warrant, violated Fourth Amendment (wrong address for defendant on arrest warrant). Wanger v. Bonner, 621 F.2d 675 (5th Cir. 1980).

Perjury in affidavit for search warrant, Jones v. State of Maryland, 584 F.2d 663 (4th Cir. 1978).

Execution of search warrant in unreasonable manner, Duncan v. Barnes, 592 F.2d 1336 (5th Cir. 1979).

b. Persons in Custody - Search of Persons and Body Cavities

Wolfish v. Levi, 573 F.2d 118 (2d Cir. 1978), cited in compendium rev'd, Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, ____ L.Ed 2d ____ (1979).

U.S. v. Daily, 606 F.2d 861 (9th Cir. 1979) (parolee).

Strip search - since plaintiff failed to show lack of good faith by defendants in her strip search following her arrest after voluntarily appearing under a warrant issued on a charge of harassment, a minor violation, the district court properly directed a verdict for defendants, Sala v. County of Suffolk, 604 F.2d 207 (2d Cir. 1979).

Strip searches after noncontact visits considered under Eighth Amendment to be cruel and unusual punishment, Bono v. Saxbe, 620 F.2d 609, 615 (7th Cir. 1980).

Hurley v. Ward, 541 F. Supp. 930 (S.D.N.Y. 1978), cited in compendium, 584 F.2d 609 (2d Cir. 1978).

VIII. H. 1. b. (Continued)

Bell v. Manson, 427 F. Supp. 450 (D. Tenn. 1976), cited in compendium, 590 F.2d 1224 (2d Cir. 1978).

c. Search of Prison Cells

Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, ____ L.Ed 2d ____ (1979).

d. False Imprisonment

Damages awarded for delay in charging and arraigning, Morrow v. Igleburger, 584 F.2d 767 (6th Cir. 1978).

Lessman v. McCormick, 591 F.2d 605 (10th Cir. 1979); Duncan v. Edwards, 600 F.2d 1069 (5th Cir. 1979).

McCollan v. Tate, 575 F.2d 509 (5th Cir. 1978), cited in compendium, rev'd, Baker v. McCollan, 443 U.S. 137, 99 S.Ct. 2689, 61 L.Ed 2d 433 (1979).

Allegation that jailer kept plaintiff imprisoned thirty days beyond expiration of his sentence alleged deprivation of due process, Douthit v. Jones, 619 F.2d 527 (5th Cir. 1980)(immunity of jailer less than other officials with more discretion).

Judgment against jailer who held plaintiff for several hours without formal filing of charges reversed. Wood v. Worachek, 618 F.2d 1225 (7th Cir. 1980)("It was not the obligation of the jailers to determine whether or not probable cause existed for his [plaintiff's] arrest," Id. at 1231).

Defendant did not violate plaintiff's Constitutional rights in forwarding incorrect information to German authorities who arrested him based on it, Sami v. U.S., 617 F.2d 755 (D.C. Cir. 1979).

VIII. H. 1. d. (Continued)

False police report - no basis for Constitutional violation unless action taken on basis of report, Landrigan v. City of Warwick, 628 F.2d 736, 744-45 (1st Cir. 1980).

H. 1. e. Malicious Prosecution, Malicious Abuse of Process

Law enforcement officers not liable for undercover investigation, Coffy v. Multi-County Narcotics Bureau, 600 F.2d 570 (6th Cir. 1979).

Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979).

State law applied in 1983 claim, Turket v. Lund, 623 F.2d 28 (7th Cir. 1980).

Singleton v. City of New York, 632 F.2d 185 (2d Cir. 1980).

f. Defense of Good Faith

Defense of good faith not available to defendants, Butler v. Goldblatt Bros., Inc., 589 F.2d 323 (7th Cir. 1978).

Law enforcement officer follows directions of supervisor or performs duties imposed by law, Coffy v. Multi-County Narcotics Bureau, 600 F.2d 570 (6th Cir. 1979).

Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979).

Turner v. Raynes, 611 F.2d 92 (5th Cir. 1980).

Vasquez v. Snow, 616 F.2d 217 (5th Cir. 1980)

Dominguez v. Beame, 603 F.2d 337 (2d Cir. 1979).

VIII. H. 1. f. (Continued)

Defendants' affidavits established good faith defense. Maiorana v. MacDonald, 596 F.2d 1072 (1st Cir. 1979)(deadly force used in making arrest).

Strip search - plaintiff failed to show lack of good faith by defendants, following her arrest on the charge of harassment. The district court properly directed verdict for defendant. Sala v. County of Suffolk, 604 F.2d 209 (2d Cir. 1979).

No genuine issue of fact as to defendants good faith in arresting plaintiff. Motion for summary judgment for defendant affirmed. Walters v. City of Ocean Springs, 626 F.2d 1317 (5th Cir. 1980).

In order to prevent a good faith defense, the plaintiff must show: one, loss of a clearly protected interest (life, liberty, or property) and; two, the defendant's conduct was unconstitutional. Beard v. Mitchell, 604 F.2d 485 (7th Cir. 1979).

2. Unnecessary Force Used in Making an Arrest

Richardson v. City of Conroe, 582 F.2d 19 (5th Cir. 1978); Davis v. Freels, 583 F.2d 337 (7th Cir. 1978); Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979); Agee v. Hickman, 490 F.2d 210 (8th Cir. 1974); Bowden v. McKenna, 600 F.2d 282 (1st Cir. 1979).

Deadly force used, Maiorana v. MacDonald, 596 F.2d 1072 (1st Cir. 1979); Garner v. Memphis Police Dept., City of Memphis, 600 F.2d 52 (6th Cir. 1979); Williams v. Kelley, 624 F.2d 695 (5th Cir. 1980) (deadly force used in subduing prisoner - no constitutional violation).

Use of excessive force is a constitutional violation, Landrigan v. City of Warwick, 628 F.2d 736 (1st Cir. 1980).

VIII. H. 2. (Continued)

Conviction of assault by prisoner does not bar 1983 action by prisoner against officials under collateral estoppel. Ridley v. Leavitt, 631 F.2d 358 (4th Cir. 1980).

District court did not error in finding officers did not use excessive force. Delaney v. Giarrusso, 633 F.2d 1126 (5th Cir. 1981).

VIII. H-2. Fifth Amendment

Federal prisoner improperly refused Youth Correction Act Treatment by federal prison officials had Fifth Amendment due process claim for damages, Micklus v. Carlson, ____ F.2d ____ (3d Cir. 9/3/80).

VIII. H-3. Sixth Amendment - Speedy Trial

Delay in preparing trial transcript, resulting in delay of disposition of appeal, constituted denial of due process, analogous to Sixth Amendment right to speedy trial, but the judge was absolutely immune (he could have employed additonal reporters but did not). Court reporter acted in good faith and was therefore immune and the county was not liable under Monell, since the county was not responsible for the delay, Rheuark v. Shaw, 628 F.2d 297 (5th Cir. 1980).

VIII. I. Eighth Amendment - General Considerations

"The cruel and unusual punishment provision (1) forbids the imposition of certain types of punishment, (2) proscribes punishment which is grossly disproportionate to the severity of the crime, and (3) imposes some limits on what may be made criminal and punished." Bono v. Saxbe, 620 F.2d 609, 612 (7th Cir. 1980).

1. Unsanitary Conditions: Lack of Sufficient Heat, Clothing, Blankets, Mattresses, Water, Light, Toilet Facilities, Shower Privileges, Articles of Hygiene, Ventilation, Privacy

Allegations of unsanitary maintenance and upkeep do not state a constitutional claim. Jones v. Diamond, 594 F.2d 997, 1018 (5th Cir. 1979).

Prison officials were not liable where they made a good faith effort to control the problem of rats, roaches, and crabs at the jail. Daily v. Byrnes, 605 F.2d 858, 860 (5th Cir. 1979).

Inadequate light, Bono v. Saxbe, 620 F.2d 609, 615 (7th Cir. 1980).

Two showers a week required, Preston v. Thompson, 589 F.2d 300 (7th Cir. 1978).

2. Inadequate meals

Twyman v. Crisp, 584 F.2d 352 (10th Cir. 1978).

Where plaintiff's expert testified that a sedentary person could be expected to lose nine pounds a month on the prison diet and that it had inadequate Vitiman C and calcium, the district court was to appoint a dietitian to review the diet provided by the jail, Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980).

VIII. I. 3. Lack of Sufficient Exercise

Outdoor exercise, Spain v. Procunier, 600 F.2d 189, 199 (9th Cir. 1979).

Each inmate confined to cell for more than sixteen hours per day to be given opportunity to exercise outside cell at least one hour per day. Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980).

Right to sufficient exercise, McGruder v. Phelps, 600 F.2d 1023 (5th Cir. 1979).

Prisoners to be given one hour of yard recreation a week, Preston v. Thompson, 589 F.2d 300 (7th Cir. 1978).

Use of small recreation area approximately once a week - no constitutional violation, Dailey v. Byrnes, 605 F.2d 858, 860 (5th Cir. 1979).

Constitutional right to outdoor exercise for convicted prisoners not established, Jones v. Diamond, 594 F.2d 997 (5th Cir. 1979).

Access to "bullpen 'dayroom'" where prisoner could exercise eighteen hours a day was adequate, Clay v. Miller, 626 F.2d 345 (4th Cir. 1980).

4. Isolation, Administrative Segregation, Maximum Security, Incarceration with Another Prisoner under Psychiatric Care, Female Prisoner in Segregation in Male Prison

McMahon v. Beard, 583 F.2d 172 (5th Cir. 1978); U.S. v. Chatman, 584 F.2d 1358 (4th Cir. 1978); Hancock v. Unknown U.S. Marshal, 587 F.2d 377 (8th Cir. 1978); Ibarra v. Olivarri, 587 F.2d 677 (5th Cir. 1979).

VIII. I. 4. (Continued)

Good faith defense not established where plaintiff was placed in isolation cell, stripped of all clothing and deprived of items of personal hygiene and psychiatrist not notified until twenty hours later. Good faith defense was established by another defendant who placed the plaintiff in observation cell under supervision of medical staff, McCray v. Burrell, 622 F.2d 705 (4th Cir. 1980).

Confinement to a cell for 23 1/2 hours per day for periods of months. McGruder v. Phelps, 608 F.2d 1023 (5th Cir. 1979).

Administrative segregation distinguised from punitive segregation. Bono v. Saxbe, 620 F.2d 609 (7th Cir. 1980)(the district court was affirmed in enjoining the use of "boxcar" cells and requiring at least seven hours of exercise).

A prisoner may be able to recover money damages for his placement in segregation to cover up brutality and when such punishment is grossly disproportionate to whatever offense he commited, Furtado v. Bishop, 604 F.2d 80, 88 (1st Cir. 1979).

6. Medical and Dental Care

Norris v. Frame, 585 F.2d 1183 (3d Cir. 1978); Green v. Carlson, 581 F.2d 669 (7th Cir. 1978); Loe v. Armistead, 582 F.2d 1291 (4th Cir. 1978); McMahon v. Beard, 583 F.2d 172 (5th Cir. 1978); Call v. Ashley, 607 F.2d 789 (8th Cir. 1979); Spicer v. Hilton, 618 F.2d 232 (3d Cir. 1980); Hamilton v. Roth, 624 F.2d 1204 (3d Cir. 1980).

Murrell v. Bennett, 615 F.2d 306 (5th Cir. 1980).

Methadone treatment found inadequate, Inmates of the Allegheny County Jail, 612 F.2d 754 (3d Cir. 1979).

VIII. I. 6. (Continued)

A complaint alleging that defendant doctor continued to treat plaintiff with a drug to which he was allergic after being told of his allergy by plaintiff and after an allergic reaction developed stated a claim against the doctor, Boyce v. Alizaduk, 595 F.2d 948 (4th Cir. 1979).

The "deliberate indifference" required for a cause of action negates good faith immunity, Fielder v. Bosshard, 590 F.2d 105 (5th Cir. 1979).

Twyman v. Crisp, 584 F.2d 352 (10th Cir. 1978).

Allegation of failure to treat plaintiff for drug addiction for ten days after arrest during which time he went through a period of painful drug withdrawal stated a claim, although under Norris v. Frame, 585 F.2d 1183 (3d Cir. 1979), there is no constitutional right to methadone, U.S. ex rel Walker v. Fayette Cty, 599 F.2d 573 (3d Cir. 1979).

Cummings v. Roberts, 628 F.2d 1065 (8th Cir. 1980).

7. Crowded Conditions

Eighteen square feet of living space for convicted prisoners constituted cruel and unusual punishment, Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980) (less than seventeen square feet for pretrial detainees constituted cruel and unusual punishment).

The district court erred in granting an injunction requiring 118.5 square feet per inmate, Jordan v. Wolke, 615 F.2d 749 (7th Cir. 1980).

District court should have conducted further hearings concerning overcrowding before limiting the population of the jail to 500, Smith v. Sullivan, 611 F.2d 1039 (5th Cir. 1980).

VIII. I. 7. (Continued)

Wolfish v. Levi, 573 F.2d 118 (2d Cir. 1978), cited in compendium, rev'd, Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 441 L.Ed 2d 520 (1979).

Johnson v. Levine, 588 F.2d 1378 (4th Cir. 1978).

Double celling prohibited, Burkes v. Teasdale, 603 F.2d 59 (8th Cir. 1979).

Jones v. Diamond, 594 F.2d 997, 1012 (5th Cir. 1979).

8. Unprovoked Attack by Prison Officials and Law Enforcement Officers

Provocations insufficient to justify attack, Martinez v. Rosado, 614 F.2d 829 (2d Cir. 1980).

Judgment for plaintiff for $3,500 damages affirmed, Stanley v. Henderson, 597 F.2d 651 (8th Cir. 1979).

Prisoner was beaten severely and suffered permanent injuries, Owens v. Haas, 601 F.2d 1242 (2d Cir. 1979).

Orpiano v. Johnson, 632 F.2d 1096 (4th Cir. 1980).

Use of excessive force by prison guard, Furtado v. Bishop, 604 F.2d 80, 95 (1st Cir. 1979).

Use by prison official of more force than necessary to subdue prisoner is actionable. However where it is an isolated incident - it is a denial of due process under the 14th Amendment rather than cruel and unusual punishment under the 8th Amendment. George v. Evans, 633 F.2d 413 (5th Cir. 1980).

See also cases on unnecessary force in Section VIII H-2, supra, and Constitutional Violation v. Tort, Section VIII E.

VIII. I. 9. Protection from Attack by Other Prisoners and Officials

The dismissal of the complaint was affirmed since plaintiff had failed to allege that defendants had foreknowledge of the attacks or threatened attacks on plaintiff and that they had tacitly or expressly approved or participated in the beatings, Thomas v. Estelle, 603 F.2d 488 (5th Cir. 1979).

Affidavits precluded summary judgment. Plaintiff's affidavit elaborated on the beatings which were denied by defendants' affidavits, Collins v. Hladsky, 603 F.2d 825 (10th Cir. 1979).

Plaintiff's testimony that he was struck by guard in retaliation for throwing water on the guard several days before stated claim, Dailey v. Byrnes, 605 F.2d 858, 860-861 (5th Cir. 1979).

A single beating was not classified as "punishment." The court properly charged the jury they should find for the plaintiff if the defendant guards used more force than appeared necessary to subdue the plaintiff. George v. Evans, 620 F.2d 495 (5th Cir. 1980). (Same case, George v. Evans, 633 F.2d 413 (5th Cir. 1980)).

Summary judgment for the defendants was improper where the plaintiff alleged use of mace against him, Stringer v. Rowe, 616 F.2d 993 (7th Cir. 1980).

Protection from sexual assaults by other prisoners, Withers v. Levine, 615 F.2d 158 (4th Cir. 1978).

Protection from attack, Holmes v. Goldin, 615 F.2d 83 (2d Cir. 1980).

McMahon v. Beard, 583 F.2d 172 (5th Cir. 1978); Davis v. Zahradnick, 600 F.2d 458 (4th Cir. 1979); Bethea v. Crouse, 417 F.2d 504 (10th Cir. 1969).

Injunctive relief properly denied, Jones v. Diamond, 594 F.2d 997, 1019 (5th Cir. 1979).

VIII. I. 10. Punishment

Plaintiff's constitutional rights were not violated by suspension of his future visiting rights for a limited period when he was found in possession of contraband immediately following a visit, White v. Keller, 588 F.2d 913 (4th Cir. 1978).

Court cannot review prison officials' exercise of discretion in imposing a disciplinary measure unless such discretion was exercised unreasonably or arbitrarily. Glouser v. Parratt, 605 F.2d 419 (8th Cir. 1979).

An allegation that the plaintiff was threatened with punishment in retaliation for communicating with public officials and filing law suits stated a claim, Rhodes v. Robinson, 612 F.2d 766 (3d Cir. 1979).

Chapman v. Pickett, 586 F.2d 22, 27 (7th Cir. 1978); Bogard v. Cook, 586 F.2d 399 (5th Cir. 1978); Furtado v. Bishop, 604 F.2d 80, 88 (1st Cir. 1979).

No constitutional violation in imposition of more severe sentence in disciplinary proceedings than could be imposed for criminal conviction for same offense, Glouser v. Parratt, 605 F.2d 419 (8th Cir. 1979).

I. 13. Prison Work

A prisoner has no right to payment for prison work, Manning v. Lockhart, 623 F.2d 536, 538 (8th Cir. 1980).

Prisoner's interest in keeping a particular prison job does not amount to "property" or "liberty" interest entitled to protection under the due process clause. Gibson v. McEvers, 631 F.2d 95 (7th Cir. 1980).

Navarette v. Enomoto, 536 F.2d 277 (9th Cir. 1976), cited in the compendium, rev'd on other grounds, Procunier v. Navarette, 434 U.S. 555 (1978).

VIII. I. 13. (Continued)

Allegation that plaintiff was removed as prison librarian to punish or hamper his legal activities stated a cause of action, Rhodes v. Robinson, 612 F.2d 766, 772 (3d Cir. 1979).

14. Use of Tear Gas, Mechanical Restraints

Spain v. Procunier, 600 F.2d 189, 193 (9th Cir. 1979).

15. Verbal Harassment

Verbal harassment does not constitute a constitutional claim. Plaintiff alleged that the sheriff laughed at him and threatened to hang him, Collins v. Cundy, 603 F.2d 825 (10th Cir. 1979).

16. Privacy

Female prisoners viewed by male guards, Forts v. Ward, 621 F.2d 1210 (2d Cir. 1980).

VIII. K. Fourteenth Amendment - Due Process Clause

1. Deprivation of Life, Liberty or Property

Rights recognized and protected by state law, Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 7 (1979); Vitek v. Jones, ____ U.S. ____, 100 S.Ct. 1254 (3/25/1980); Block v. Potter, 631 F.2d 235 (3d Cir. 1980).

Right established by regulations and implementing statute, Winsett v. McGinnes, 617 F.2d 996 (3d Cir. 1980).

Clark v. Salem, 628 F.2d 1120 (8th Cir. 1980).

Paul distinguised in Marrero v. Hialeah, 625 F.2d 499 (5th Cir. 1980); Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979).

Plaintiff must be given an opportunity to address the issue of state law entitlement, Lokey v. Richardson, 600 F.2d 1265 (9th Cir. 1979).

Killing of a young girl by a parolee five months after his release on parole was not action by the state and did not deprive the girl of life within the meaning of the Fourteenth Amendment, Martinez v. California, ____ U.S. ____, 100 S.Ct. 553, ____ L.Ed 2d ____ (1/15/1980).

Prison rules gave rise to limited liberty interest. "The government's actions need only have a rational basis: a compelling state interest need not be demonstrated." Bono v. Saxbe, 620 F.2d 609, 615 (7th Cir. 1980).

No violation of right to privacy where news reporter tape recorded and reported on plaintiff's loud, boisterous and vulgar language in the police station, Holman v. Central Ark. Broadcasting Co., 610 F.2d 542 (8th Cir. 1979).

VIII. K. 1. (Continued)

Prison regulations gave a right to due process procedures prior to transfer to administrative segregation but prisoners had the right only to Wolff procedures, not to the procedures created by the regulations, Bills v. Henderson, 631 F.2d 1287 (6th Cir. 1980).

3. Access to the Courts

No violation in banning paralegal with criminal record, Phillips v. Bureau of Prisons, 591 F.2d 966 (D.C. Cir. 1979).

A prisoner may have standing to bring action to assert rights of other prisoners who need assistance, Rhodes v. Robinson, 612 F.2d 766 (3d Cir. 1979).

Allegations of interference with ability to obtain legal assistance and retaliation for attempt to obtain legal redress stated a claim, Ferrante v. Moran, 618 F.2d 888 (1st Cir. 1980).

Where a law library was admittedly adequate, action was remanded for determination whether it was adequate for illiterate and/or ignorant prisoners who had assistance of "writ writers" and inmate law clerks, Battle v. Anderson, 614 F.2d 251 (10th Cir. 1980).

An allegation that the plaintiff was transferred from medium to maximum security as retaliation for filing a complaint was too vague to state a claim, Lenardo v. Moran, 611 F.2d 397 (1st Cir. 1979).

An allegation that the plaintiff was transferred to another institution as retaliation for law suits states a claim, McDonald v. Hall, 610 F.2d 16 (1st Cir. 1979)(mere allegation that he received no answer to his request for permission to use the library does not).

VIII. K. 3. (Continued)

Although the prison library was admittedly inadequate, the district court properly granted defendant's motion for summary judgment based on the adequacy of legal assistance, dissent disagreed, Kelsey v. State of Minn., 622 F.2d 956 (8th Cir. 1980).

There was no violation in prohibiting meetings of a group established to bring law suits against the prison where the group did not comply with the regulations, Preast v. Cox, 628 F.2d 292 (4th Cir. 1980).

Remand for consideration of adequacy of access to county law library, Leeds v. Watson, 630 F.2d 674 (9th Cir. 1980).

Access to photocopying machine adequate, Gibson v. McEvers, 631 F.2d 95 (7th Cir. 1980).

Award of money damages for plaintiff attorney and her prisoner clients was affirmed in Cruz v. Bato, 603 F.2d 1178 (5th Cir. 1979). (The attorney's clients had been transferred to a separate wing in the prison where their participation in prison programs was severely restricted and limited. Plaintiff's attorney's communications with her clients were limited.)

Order to prison officials to submit a plan to provide adequate law library and legal assistance was not appealable, Spates v. Manson, 619 F.2d 204 (2d Cir. 1980).

Inmate has standing to raise denial of access to court for other prisoners where he was not permitted to give them legal assistance, McDonald v. Hall, 610 F.2d 16 (1st Cir. 1979).

Allegation that defendant's social worker at the county jail took plaintiff's legal papers and thereby impaired his ability to defend himself at trial stated a claim, Tyler v. Woodson, 597 F.2d 643 (8th Cir. 1979).

VIII. K. 3. (Continued)

Making photocopying by prisoners prohibitively expensive in order to make a profit could constitute denial of access to the courts, Rhodes v. Robinson, 612 F.2d 766 (3d Cir. 1979). But where other options are available, there is no constitutional violation, Harrell v. Keohane, 631 F.2d 1059 (10th Cir. 1980)(no constitutional violation where only five inmates could use library at one time).

Limited access to library was not a constitutional violation, Bono v. Saxbe, 620 F.2d 609 (7th Cir. 1980).

Cruz v. Hauck, 515 F.2d 322 (5th Cir. 1975), discussed on page 275 of the compendium, remanded again, Cruz v. Hauck, 627 F.2d 710 (5th Cir. 1980) for determination whether plaintiffs have meaningful access to the courts, enough writ writers, etc.

Plaintiffs failed to show denial of access to the courts by named defendants, Jones v. Diamond, 594 F.2d 997, 1023 (5th Cir. 1979).

Buise v. Hudkins, 584 F.2d 223, (7th Cir. 1978); Twyman v. Crisp, 584 F.2d 352 (10th Cir. 1978); Matter of Green, 586 F.2d 1247 (8th Cir. 1978); Williams v. Leeke, 584 F.2d 1336 (4th Cir. 1978); Hudspeth v. Figgins, 584 F.2d 1345 (4th Cir. 1978); Brown v. Winston, 584 F.2d 1336 (4th Cir. 1978).

4. Disciplinary Hearings and Procedures

a. Nature of Hearings for Major Misconduct

Challenge to disciplinary hearing habeas corpus rather than civil rights, Johnson v. Hardy, 601 F.2d 172 (5th Cir. 1979).

Right to due process procedures prior to transfer to administrative segregation not clearly established in November, 1977 and defendants were therefore immune to claim for money damages, Raffone v. Robinson, 607 F.2d 1058 (2d Cir. 1979).

VIII. K. 4. a. (Continued)

Complaint presented issue whether State Department of Correction directive created a liberty interest and complaint was improperly dismissed, Mitchell v. Hicks, 614 F.2d 1016 (5th Cir. 1980); Bullard v. Wainwright, 614 F.2d 1020 (5th Cir. 1980) (reclassification and transfer case).

Prisoners entitled to due process hearing prior to transfer to administrative segregation, Bills v. Henderson, 631 F.2d 1287 (6th Cir. 1980)(entitled to notice of charges and reasons for decision).

Adequacy of statement of reasons for disciplinary action, Rhodes v. Robinson, 612 F.2d 766 (3d Cir. 1979); Bono v. Saxbe, 620 F.2d 609, 619 (7th Cir. 1980).

Dismissal of complaint affirmed where the plaintiff alleged he was not permitted to call witnesses and no reasons were given, Hurney v. Carver, 602 F.2d 993 (1st Cir. 1979).

Dismissal of complaint affirmed where plaintiff alleged that he had been permitted to call only one witness at his disciplinary hearing, Thomas v. Estelle, 603 F.2d 488 (5th Cir. 1979). The plaintiff had failed to provide specific information as to what witnesses, if any, he had requested and whether the disciplinary committee had given any reason for refusing such request. The courts cannot consider such actions without allegations that the refusal to call witnesses was arbitrary, capricious, or an abuse of discretion.

b. Proceedings Required for Lesser Penalties Such as Loss of Privileges

A fortnight's deprivation of movie and commissary privileges did not constitute a sufficient penalty to grant plaintiff the right to call witnesses, Gibson v. McEvers, 631 F.2d 95 (7th Cir. 1980).

VIII. K. 4. c. Classification and Reclassification Proceedings, Transfer to Maximum Security

See Levinson and Williams, Inmate Classification: Security/Custody Considerations, 43 Fed. Probation 37 (1979).

A transfer to segregation may be actionable where it violated plaintiff's right of access to the courts, Furtado v. Bishop, 604 F.2d 80, 87-88 (1st Cir. 1979). See Leonardo v. Moran, 611 F.2d 397 (1st Cir. 1979) where the complaint was not sufficiently specific.

No right to due process hearing for a federal prisoner prior to classification as a special offender, Salomon v. Benson, 563 F.2d 339 (7th Cir. 1977).

No right to procedural due process prior to classification as a central monitoring case by federal penal authorities, Makris v. U.S. Bureau of Prison, 606 F.2d 575 (5th Cir. 1979).

Hearing required at time of placement in administrative segregation, Bono v. Saxbe, 620 F.2d 609, 218 (7th Cir. 1980).

Inmates have no right to a particular classification under state law, McGruder v. Phelps, 608 F.2d 1023 (5th Cir. 1979).

Remand for determination whether state law created liberty interest in reclassification procedures, Bullard v. Wainwright, 614 F.2d 1020 (5th Cir. 1980).

No constitutional violation in classification of pretrial detainees as maximum security, Villanueva v. George, 632 F.2d 707 (8th Cir. 1980).

VIII. K. 4. c. (Continued)

"In the absence of some entitlement having its genesis in state law, no due process right to classification exists for convicted state prisoners", Jones v. Diamond, 594 F.2d 997, 1015 (5th Cir. 1979). However pretrial detainees have the right to such classification as will protect them from "violent, disturbed, and contagiously ill individuals as far as reasonably possible", Id. at 1016.

Twyman v. Crisp, 584 F.2d 352 (10th Cir. 1978); Lokey v. Richardson, 600 F.2d 1265 (9th Cir. 1979); Wright v. Enomoto, 462 F. Supp. 397 (N.D. Cal. 1976), aff'd, 434 U.S. 1052 (1978).

d. Loss of Good Time Credits

Escaped prisoner not denied due process by loss of good time at hearing held in absentia where he was granted a hearing within reasonable time after his capture, Evans v. Wilkerson, 605 F.2d 369 (7th Cir. 1979).

District court properly ordered reinstatement of good time without prior exhaustion, Thompson v. Capps, 623 F.2d 389 (5th Cir. 1980).

Action seeking good time is habeas rather than civil rights, Johnson v. Hardy, 601 F.2d 172 (5th Cir. 1979).

Keenan v. Bennett, 613 F.2d 127 (5th Cir. 1980); Bayless v. Estelle, 583 F.2d 730 (5th Cir. 1978); Lazard v. U.S., 583 F.2d 176 (5th Cir. 1978); Granville v. Hogan, 591 F.2d 323 (5th Cir. 1979); Lambert v. Warden, 591 F.2d 4 (5th Cir. 1979).

VIII. K. 4. g. Acquittal of Criminal Charge - Effect on Disciplinary Action

Acquittal of criminal charges does not prevent prison officials from disciplining a prisoner for infraction of the prison rules which arose from the same incident, Lane v. Hanberry, 593 F.2d 648 (5th Cir. 1979).

h. Timing of Disciplinary Hearing, Exigent Circumstances

Emergency terminated, Preston v. Thompson, 589 F.2d 300 (7th Cir. 1978).

Bills v. Henderson, 631 F.2d 1287, 1296, n. 6 (6th Cir. 1980).

i. A Prisoner Can Be Kept in Segregation Until He Agrees to Abide by the Rules of the Institution

Glouser v. Parratt, 605 F.2d 419 (8th Cir. 1979).

5. Transfer to Another Institution

The district court properly directed transfer of plaintiffs to another prison after finding their lives were jeopardized by present incarceration, Streeter v. Hopper, 618 F.2d 1178 (5th Cir. 1980).

Allegation that plaintiff was transferred to another prison in retaliation for law suits states a claim, McDonald v. Hall, 610 F.2d 16 (1st Cir. 1979); Hohman v. Hogan, 597 F.2d 490 (2d Cir. 1979); Garland v. Polley, 594 F.2d 1220 (8th Cir. 1979); Furtado v. Bishop, 604 F.2d 80, 87-88 (1st Cir. 1979).

Transfer from state to federal prison - no violation of federal law, Beshaw v. Fenton, ____ F.2d ____ (3d Cir. 12/15/80).

VIII. K. 5. (Continued)

A prisoner "has a right not to be forceably transported by government officials while he is in a life-threatening condition." Roba v. U.S., 604 F.2d 215, 218 (2d Cir. 1979).

No error in refusal to find defendants in civil contempt for violating consent decree requiring notice and hearing prior to transfer to another prison where change in the law destroyed the premise on which the consent decree was formulated, Gomes v. Moran, 605 F.2d 27 (1st Cir. 1979).

Complaint stated a claim where plaintiff alleged he was not given a pretransfer hearing called for under state law and his transfer was approved to mask errors of other prison officials in investigation and disposition of plaintiff's disciplinary report, Stringer v. Rowe, 616 F.2d 993 (7th Cir. 1980).

Complaint raised question whether state regulations created liberty interest, Ballard v. Wainwright, 614 F.2d 1020 (5th Cir. 1980).

Transfer of prisoner serving a life sentence from state to federal prison, Cofone v. Manson, 594 F.2d 934 (2d Cir. 1979).

The test to be applied is whether prisoner had justifiable expectation that he would not be transferred, Lair v. Fauver, 595 F.2d 911 (3d Cir. 1979).

Vitek v. Miller, 436 U.S. 407 (1978), cited in compendium, p. 300, aff'd, Vitek v. Jones, ____ U.S. ____, 100 S.Ct. 1254, ____ L.Ed 2d ____ (3/25/1980).

Lono v. Fenton, 581 F.2d 645 (7th Cir. 1978); Buise v. Hudkins, 584 F.2d 223 (7th Cir. 1978); Beck v. Weekes, 589 F.2d 901 (5th Cir. 1979); Green v. White, 589 F.2d 378 (8th Cir. 1979); Sisbarro v. Warden, 592 F.2d 1 (1st Cir. 1979).

VIII. K. 6. Parole Release and Parole Recission Hearings

Greenholtz v. Neb. Penal Inmates, 442 U.S. 1, ____ S.Ct. ____, ____ L.Ed 2d ____ (5/29/1979).

Block v. Potter, 631 F.2d 233 (3d Cir. 1980).

Christopher v. U.S. Bd. of Parole, 589 F.2d 924 (7th Cir. 1978).

Inmates of Neb. Penal and Correctional Complex, 576 F.2d 1274, 1285 (8th Cir. 1978), cited in compendium, p. 306, rev'd, Greenholtz v. Neb. Penal Inmates, supra.

Delay in granting a federal prisoner parole consideration as required by 18 U.S.C. Section 4208 did not violate his civil rights. Further, since plaintiff had been granted parole, his claim was moot, DeShields v. United States Parole Com'n, 593 F.2d 354 (8th Cir. 1979).

7. Parole and Probation Revocation Hearings

c. Work Release

Winsett v. McGinnes, 617 F.2d 996 (3d Cir. 1980).

8. Loss or Confiscation of Prisoner's Property by Prison Officials

Plaintiff's allegation that guard took his radio and destroyed it for no reason stated a claim, Ferrante v. Moran, 618 F.2d 888 (1st Cir. 1980).

Allegation that propery was lost during transfer does not state a claim, Stringer v. Rowe, 616 F.2d 993, 1000 (7th Cir. 1980).

Confiscation of money in accordance with state law did not violate prisoner's constitutional rights, Sullivan v. Ford, 609 F.2d 197 (5th Cir. 1980).

VIII. K. 8. (Continued)

Allegations that the defendant social worker at the county jail took plaintiff's legal papers and thereby impaired his ability to defend himself at trial stated a claim, Tyler v. Woodson, 597 F.2d 643 (8th Cir. 1979).

"Claims of intentional deprivation of a prisoner's property under color of state law are actionable under 42 U.S.C. Section 1983. . . . Failure to return a prisoner's confiscated property when requested to do so, . . . or permanent forfeiture of a prisoner's property without statutory authority, . . . may violate the due process clause of the Fourteenth Amendment even if the initial confiscation was justified and authorized", Jensen v. Klecker, 599 F.2d 243, 245 (8th Cir. 1979).

Defendant's motion for summary judgment properly granted where plaintiff did not show defendants were personally responsible for any delay or neglect in delivery of plaintiff's legal papers and other property to him, Villanueva v. George, 632 F.2d 707 (8th Cir. 1980).

Hanvey v. Blankenship, 631 F.2d 296 (4th Cir. 1980); Johnson v. Duffy, 588 F.2d 740 (9th Cir. 1978).

9. Prison Regulations - Hair Length, Grooming, Dress, Telephone Privileges

No violation in prohibiting meetings by group formed to bring law suits to challenge prison conditions where group did not comply with required procedure for organizations, Preast v. Cox, 628 F.2d 292 (4th Cir. 1980).

Prison regulations created liberty interest requiring due process hearings prior to transfer to administrative segregation but procedures due are those defined in Wolff, rather than the regulations, Bills v. Henderson, 631 F.2d 1290 (6th Cir. 1980).

VIII. K. 9. (Continued)

Hair length regulations upheld, Rinehart v. Bremer, 471 F.2d 705 (8th Cir. 1974); Daugherty v. Reagan, 446 F.2d 75 (9th Cir. 1971).

Allegation that plaintiff was ordered to shave his goatee and mustache failed to state a claim, Ralls v. Wolfe, 448 F.2d 778 (8th Cir. 1971).

Damage award against defendant warden affirmed where he had plaintiff's hair cut although he knew plaintiff was to be released, Carter v. Noble, 526 F.2d 677 (5th Cir. 1976).

10. Pretrial Detainees

Due process applicable rather than Eighth Amendment, Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, ____ L.Ed 2d ____, n. 16 (1979).

No constitutional violation in classification of pretrial detainee as maximum security, Villanueva v. George, 632 F.2d 707 (8th Cir. 1980).

Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980); Jordan v. Wolke, 593 F.2d 772 (7th Cir. 1979).

District court erred in requiring contact visits and prohibiting overcrowding, Jordan v. Wolke, 615 F.2d 749 (7th Cir. 1980).

11. Failure to Comply with State Law

Prison regulations created a liberty interest requiring due process proceedings, but procedures required were those defined in Wolff, rather than the regulations, Bills v. Henderson, 631 F.2d 1289 (6th Cir. 1980).

VIII. K. 12. Access to Prison Records; Correction of Errors

Prisoner entitled to have incorrect prejudicial information removed from his prison file. However, he must first apply to prison authorities to expunge the information, Paine v. Baker, 595 F.2d 197 (4th Cir. 1979).

13. Conduct of Business by Prisoner

District court properly dismissed plaintiff's claim alleging that the prison official's action in shutting down the leather goods business which they operated inside the prison denied them due process, Garland v. Polley, 594 F.2d 1220 (8th Cir. 1979). Accord, French v. Butterworth, 614 F.2d 23 (1st Cir. 1980) (health food business).

14. Fair Trial

a. Pretrial Publicity

Tunnel v. Wiley, 514 F.2d 971 (3d Cir. 1975).

b. Withholding of exculpatory evidence, Henderson v. Fisher, 631 F.2d 1115 (3d Cir. 1980)

VIII. L. Fourteenth Amendment - Equal Protection Clause

Award of money damages against director of the Texas Department of Corrections for segregating and restricting the activities of all prisoners who were represented by plaintiff attorney affirmed, Cruz v. Bato, 603 F.2d 1178 (5th Cir. 1979).

Bull pens unconstitutionally segregated by race, Jones v. Diamond, 594 F.2d 997, 1012 (5th Cir. 1979).

No denial of equal protection, Gibson v. McEvers, 631 F.2d 95 (7th Cir. 1980).

IX. REQUIREMENTS FOR A CAUSE OF ACTION UNDER 42 U.S.C. SECTION 1985 and 1986

Novotony v. Great Am. Fed. Sav. and Loan Ass'n, 584 F.2d 1235 (3d Cir. 1978), cited in compendium, p. 357, rev'd, Great Am. Fed. Sav. and Loan Ass'n v. Novotony, 442 U.S. 366, ____ S.Ct. ____, ____ L.Ed 2d ____ (1979). The court assumed without deciding that the directors of a single corporation could form a conspiracy within the meaning of Section 1985(c).

State action not required in actions under Section 1985, Gillespie v. Civiletti, 629 F.2d 637 (9th Cir. 1980) (1985 covers all deprivations of equal protection, equal privileges and immunities).

Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979); Owens v. Haas, 601 F.2d 1242 (2d Cir. 1979)(liability of municipality).

X. THE REQUIREMENTS FOR A CAUSE OF ACTION UNDER 28 U.S.C. SECTION 1331 (SUPP. 1978)

Bivens claim based on violation of Fifth Amendment upheld, Davis v. Passman, 442 U.S. 228, 99 S.Ct. 2264, 60 L.Ed 2d 846 (1979). Accord, Micklus v. Carlson, 632 F.2d 227 (3d Cir. 1980)(claim for damages and injunctive relief - defendant's failure to give plaintiff Youth Correction Act treatment).

Davis v. Passman, 571 F.2d 793 (5th Cir. 1978), cited compendium, p. 361, rev'd, Davis v. Passman, 442 U.S. 228, supra.

Bivens claim for Eighth Amendment violation, Carlson v. Green, 446 U.S. 14, 100 S.Ct. 1468, ____ L.Ed 2d ____ (1980)

Remand for development of the facts through prison administrative procedures to determine whether there are special facts which counsel hesitation, Brice v. Day, 604 F.2d 664 (10th Cir. 1979).

Fifth Amendment claim against U.S. Marshals, Loe v. Armistead, 582 F.2d 1291 (4th Cir. 1978).

Williams v. Wood, 612 F.2d 982 (5th Cir. 1980).

Briggs v. Godwin, 569 F.2d 1 (D.C. Cir. 1977), cited in compendium, p. 372, rev'd, Stafford v. Briggs, 444 U.S. 527, 100 S.Ct. 774, ____ L.Ed 2d ____ (2/20/1980).

When money damages are sought from federal officials the officials must be personally served, Micklus v. Carlson, 632 F.2d 227 (3d Cir. 1980)

Municipality not liable under respondeat superior in Bivens claim, Dean v. Gladney, 621 F.2d 1331 (5th Cir. 1980).

X. (Continued)

Bivens claim available against U.S. Marshal, Gillespie v. Civiletti, 629 F.2d 637, 641-42 (9th Cir. 1980).

Williams v. Wood, 612 F.2d 982 (5th Cir. 1980).

XI. DEFENSES

A. Statute of Limitations

Federal court will adopt state's exceptions to statute of limitations as long as federal policies not undermined, Swietlowich v. County of Bucks, 610 F.2d 1157 (3d Cir. 1979).

Amendment of complaint to add a defendant against whom the statute of limitations has expired, Wood v. Worachek, 618 F.2d 1225 (7th Cir. 1980); Phillips v. Purdy, 617 F.2d 139 (5th Cir. 1980).

State statute of limitations tolled while plaintiffs litigated claims in state courts, Leigh v. McGuire, 613 F.2d 380 (2d Cir. 1979).

State tolling provisions are applicable, Bd. of Regents of the Univ. of N.Y. v. Tomanio, 446 U.S. 478, 100 S.Ct. 1790, ____ L.Ed 2d ____ (1980).

Williams v. Rhoden, 629 F.2d 1099 (5th Cir. 1980).

XI. B. Res Judicata and Collateral Estoppel

Allen v. McCurry, ____ U.S. ____, 101 S.Ct. 411, ____ L.Ed 2d ____ (12/9/1980). See Collateral Estoppel in Section 1983 Actions after Stone v. Powell; McCurry v. Allen, 64 Minn. L. Rev. 1060 (1980).

Res judicata can be raised by motion for summary judgment or motion to dismiss for failure to state a claim, treated as a motion for summary judgment, 1B Moore's Federal Practice, 0.408(1) at 951-952.

Res judicata in 1983 actions is limited. N.J. Educ. Ass'n v. Burke, 579 F.2d 764 (3d Cir. 1978), cert. denied, 439 U.S. 894 (1978).

Montana v. U.S., 440 U.S. 147, ____ S.Ct. ____, ____ L.Ed. 2d ____ (1979).

Res judicata prevented plaintiff from claiming damages under Section 1983 for defendant's excessive use of force where plaintiff had prevailed in state tort action against the defendant for excessive use of force. Plaintiff cannot now assert another theory of recovery. However, a conspiracy claim is a separate cause of action and is not barred. Further, res judicata does not bar plaintiff's claim for excessive use of force against other defendants, Landrigan v. City of Warwick, 628 F.2d 736 (1st Cir. 1980).

Where plaintiff was convicted of assault of deputy sheriffs collateral estoppel did not bar 1983 action by him against them for use of unlawful force to subdue him. It would not have been a defense to the assault charge, so the issue was not determined, Ridley v. Leavitt, 631 F.2d 358 (4th Cir. 1980).

Record presented was inadequate for determination of collateral estoppel, Mancini v. Lester, 630 F.2d 990 (3d Cir. 1980).

Where there was evidence that the defendant had intentionally misrepresented the facts, collateral estoppel did not bar the action, Whitley v. Seibel, 613 F.2d 682 (7th Cir. 1978).

XI. B. (Continued)

Court may refuse to consider claim by individual plaintiff who is a member of a class in another action raising same issues, Brown v. Eton Vermillion, 593 F.2d 321 (8th Cir. 1979).

U.S. v. Keller, 624 F.2d 1154 (3d Cir. 1980).

XI. C. Case in Controversy Problems; Mootness

Gannett Co., Inc. v. DePasquale, 443 U.S. 368, ____ S.Ct. ___, ____ L.Ed 2d ____ (7/2/1979).

Action not moot although class certification denied and individual plaintiff's claim had expired, U.S. Parole Comm'n v. Geraghty, 445 U.S. 388, 100 S.Ct. 1202, ____ L.Ed 2d ____ (3/19/1980).

Action not moot where defendants tendered plaintiff's claim after class action certification denied, Deposit Guarantee Nat'l Bank v. Ropper, 445 U.S. 326, 100 S.Ct. 1166, ____ L.Ed 2d ____ (3/19/1980).

Claim for injunctive relief not moot although prisoner had been released on parole, Chapman v. Pickett, 586 F.2d 22 (7th Cir. 1978).

Case moot where plaintiff's request for transfer to a West Coast prison had been granted, Cook v. Hanberry, 596 F.2d 658 (5th Cir. 1979).

Case not moot where plaintiff who sought Youth Correction Act treatment had been released on parole to the subsequent sentence, Micklus v. Carlson, 632 F.2d 227 (3d Cir. 1980).

Appeal dismissed as moot where defendant had complied with district court's injunction and plaintiff had obtained the relief sought. District court directed to dismiss plaintiff's complaint as moot, Bagby v. Beal, 606 F.2d 411 (3d Cir. 1979).

Vitek v. Miller, 436 U.S. 407, 98 S.Ct. 2276 (1978), cited in compendium, p. 291, ultimately held action not moot since plaintiff was under threat of transfer, Vitek v. Jones, ____ U.S. ____, 100 S.Ct. 1254, ____ L.Ed 2d ____ (3/25/1980).

Appeal dismissed where criminal defendant had escaped from custody, Gov. of V.I. v. James, 621 F.2d 588 (3d Cir. 1980).

XI. C. (Continued)

Where plaintiff sought injunction to restrain defendants from continuing to rely on allegedly impermissible criteria in evaluating his future applications for work release and he had been granted conditional parole, his injunctive request no longer implied an "actual controversy" and was moot, Winsett v. McGinnes, 617 F.2d 996 (3d Cir. 1980)(but claims for damages, declaratory judgment not moot).

Plaintiff complained of transfer from state (Vermont) to federal prison. Was eventually transferred to another state (Massachusetts) prison. Issue of transfer from state to federal prison was not moot since he could be returned, Beshaw v. Fenton, ____ F.2d ____ (3d Cir. 12/15/1980).

Injunctive claims moot since plaintiff was no longer in the jail and there was no evidence he would be transferred back to it, Jerry v. Francisco, 632 F.2d 252 (3d Cir. 1980).

Release of all named plaintiffs prior to argument before the court of appeals did not moot class action, Cruz v. Hauck, 627 F.2d 712 (5th Cir. 1980).

Appeal dismissed as moot where defendant had complied with district court's injunction and plaintiff had obtained the relief sought. The district court was directed to dismiss plaintiff's complaint as moot, Bagby v. Beal, 606 F.2d 411 (3d Cir. 1979).

Transfer from prison moots claim for injunctive relief but does not moot claim for damages, Lokey v. Richardson, 600 F.2d 1265 (9th Cir. 1979).

While a declaratory judgment applies only to the plaintiffs, it may have stare decisis effect as to other prisoners, Y.W.C.A. v. Kugler, 463 F.2d 203 (3d Cir. 1972).

Standing - prisoner may have standing to bring action to protect rights of other prisoners who need assistance to have access to courts, Rhodes v. Robinson, 612 F.2d 766 (3d Cir. 1979).

XI. C. (Continued)

Sufficiently realistic prospect of current or future injury is sufficient for standing, McKay v. Heyison, 614 F.2d 899 (3d Cir. 1980).

McDonald v. Hall, 610 F.2d 16 (1st Cir. 1979) (standing).

XI. D. Immunities

State statute granting absolute immunity to state officials in state tort actions is not unconstitutional. However, the state immunity statute is not applicable to a 1983 claim. "Conduct by persons acting under color of state law which is wrongful under 42 U.S.C. Section 1983 or 1985(c) cannot be immunized by state law", Martinez v. California, ____ U.S. ____, 100 S.Ct. 553, ____ L.Ed 2d ____ (1/15/1980).

"The same reasons that underlie granting immunity to prosecutors in Section 1983 actions, . . . require its extension to the other sections of the Civil Rights Acts as well." Ross v. Detective Meagan, ____ F.2d ____, n. 2 (3d Cir. 1/16/1981).

1. Absolute Immunities

a. Judicial Immunity

Justice of the peace immune, Turner v. Raynes, 611 F.2d 92 (5th Cir. 1980).

"Absence of jurisdiction" when judge acts purely in private and nonjudicial capacity, Henzel v. Gerstein, 608 F.2d 605 (5th Cir. 1979).

Judicial immunity waived when not raised as affirmative defense, Boyd v. Carroll, 624 F.2d 730 (5th Cir. 1980).

Complaint improperly dismissed on basis of judicial immunity. Factual development required. Plaintiff alleged a judge and other defendants acted to cover up his shooting by chief deputy jailer, illegally imprisoned him for escape as part of the coverup and to prevent him from seeking redress in court, Williams v. Rhoden, 629 F.2d 1099 (5th Cir. 1980).

The justice of the peace who allegedly maliciously issued arrest warrant immune, Heimbach v. Village of Lyons, 597 F.2d 344 (2d Cir. 1979).

XI. D. 1. a. (Continued)

Where the defendant was acting as both an alderman, in which capacity he was entitled to only qualified good faith immunity, and as a municipal judge, the jury could find that his actions in allegedly conspiring against plaintiff and in ordering his arrest during a meeting, were taken in his role of alderman and therefore the jury could properly have found they were not judicial acts, Crower v. Lucas, 595 F.2d 985 (5th Cir. 1979).

Where judge encountered a deputy sheriff who told him about plaintiff shooting a gun in her yard, and he orally ordered the deputy to arrest her, he was performing a judicial function and was immune, Watson v. Interstate Fire and Cas. Co., 611 F.2d 120 (5th Cir. 1980).

Judge immune even if he was bribed, Sparks v. Duval County Ranch Co., Inc., 588 F.2d 124 (5th Cir. 1979), en banc, 604 F.2d 976 (1979), cert. denied, 100 S.Ct. 1339, cert. granted, 100 S.Ct. 1336 (1980).

Award of compensatory damages of $60,000 and punitive damages of $200,000 against judge affirmed, Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979).

Judges immune when serving in legislative capacity but not when serving in "enforcement" capacity, such as regulating the bar. However, they could not be required to pay attorney's fee, Supreme Ct. of Va. v. Consumers Union of the U.S., ____ U.S. ____, 100 S.Ct. 1967, ____ L.Ed 2d ____ (6/2/1980). (The question whether judges are immune in Section 1983 actions seeking equitable relief commented on but not decided).

Judges not immune to claim for attorney's fee when sued in official capacity, Morrison v. Ayoob, 627 F.2d 669 (3d Cir. 1980).

XI. D. 1. a. (Continued)

Judge not immune when acting as prosecutor, Lopez v. Vanderwater, 620 F.2d 1229 (7th Cir. 1980).

Judge immune where there is no clear absence of jurisdiction and his acts are judicial acts, Martin v. Aubucken, 623 F.2d 1282 (8th Cir. 1980).

Judges not immune in Section 1983 actions seeking equitable relief, Harris v. Harvey, 605 F.2d 330, 335 (7th Cir. 1979).

Wilkins v. Rogers, 581 F.2d 399 (4th Cir. 1978).

Action against judge improperly dismissed on the ground of judicial immunity where plaintiff alleged that judge agreed, prior to filing of guardianship petition by plaintiff's parents, to order guardianship, knowing jurisdictional allegations were fraudulent and that the court could not obtain jurisdiction over the plaintiff since he resided in another state and was lured into state for purpose of service. The court held that the judge's private, prior agreement to decide in favor of one party was not a "judicial act." Further, absence of personal jurisdiction deprived the court of jurisdiction and therefore there was no immunity under Sparks. Rankin v. Howard, 633 F.2d 844 (9th Cir. 1980). "[W]hen a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost." Id. at 849.

b. Prosecutorial Immunity

Where plaintiff alleged the prosecutor did not prevent police officer from removing evidence which plaintiff claimed would have been exculpatory, prosecutor entitled to only qualified immunity, rather than absolute immunity, and district court erred in dismissing, Henderson v. Fisher, 631 F.2d 1115 (3d Cir. 1980).

XI. D. 1. b. (Continued)

Prosecutor's immunity extends to initiating, investigating and pursuing a criminal investigation, Cook v. Houston Post, 616 F.2d 791 (5th Cir. 1980); Henzel v. Gerstein, 608 F.2d 654 (5th Cir. 1979). Distinction between investigative and prosecutive conduct discussed, Lee v. Willins, 617 F.2d 320 (2d Cir. 1980).

Remand for determination whether prosecutor's functions were investigatory or administrative rather than prosecutorial, Mancini v. Lester, 630 F.2d 990 (3d Cir. 1980); Forsyth v. Kleindienst, 599 F.2d 1203 (3d Cir. 1979), petition for writ of certiorari pending sub. nom., Mitchell v. Forsyth.

Prosecutor engaged in investigatory functions entitled to only qualified immunity, Marrero v. Hialeah, 625 F.2d 499 (5th Cir. 1980).

Complaint improperly dismissed without development of facts. Plaintiff alleged the judge, prosecutor, and others acted to cover up his shooting by chief deputy jailer, allegedly imprisoned him for escape as part of the coverup and prevented him from seeking redress in court, Williams v. Rhoden, 629 F.2d 1099 (5th Cir. 1980).

Ellison v. Stephens, 581 F.2d 584 (6th Cir. 1978) (state attorney general); Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979) (investigative v. advocacy functions).

c. Immunity of Public Defenders and Private Defense Counsel

State courts are not required to grant immunity in malpractice action to attorney appointed in federal court to represent a criminal defendant, Ferri v. Ackerman, 444 U.S. 193, ____ S.Ct. ____, ____ L.Ed 2d ____ (12/4/1979).

XI. D. 1. c. (Continued)

Housand v. Heiman, 594 F.2d 923 (2d Cir. 1979) approved dismissal of constitutional claim against appointed attorney although the court failed to identify the basis - lack of state action or immunity. However, the case was remanded for consideration of a possible diversity action based on malpractice under state law.

No tort claim against appointed counsel under Section 1983. Estelle standard adopted for attorneys, Brown v. Schiff, 614 F.2d 237 (10th Cir. 1980).

Public defender has only qualified immunity, Dodson v. Polk County, 628 F.2d 1104 (8th Cir. 1980).

d. Immunity of Witnesses

"We need not now take a position on whether perjurious testimony by law enforcement personnel is actionable under section 1983 since there is no indication plaintiff was damaged in any manner by the testimony." (plaintiff prevailed in state tort action), Landrigan v. City of Warwick, 628 F.2d 736, 746 (1st Cir. 1980).

2. Qualified Good Faith Immunity of Officials

a. General Discussion

Judicial immunity extends to those who carry out orders of judges, Slotnick v. Garfinkle, 632 F.2d 163 (1st Cir. 1980).

Plaintiff is not required to allege bad faith, Gomez v. Toledo, ____ U.S. ____, 100 S.Ct. 1920, ____ L.Ed 2d ____ (5/27/1980).

Good faith immunity established by defendants. Defendants instituted emergency mental commitment procedures against plaintiff after he sent abusive letters to local government officials, Reese v. Nelson, 598 F.2d 822 (3d Cir. 1979).

XI. D. 2. a. (Continued)

"Reliance on advice of counsel does not serve as an absolute defense to a civil rights action. Rather, it is among the calculus of facts that a jury is to consider on the issue of good faith", Crowe v. Lucas, 595 F.2d 985, 992 (5th Cir. 1979). The extent of a defendant's qualified immunity depends on the degree of discretion he exercises in performing his official duties. Subjective intent to harm the plaintiff deprives the official of immunity regardless of the objective state of the law at the time of his conduct. Further, qualified immunity does not protect an official where his actions contravene settled, undisputable law, regardless of his intent. Douthit v. Jones, 619 F.2d 527 (5th Cir. 1980).

Immunities not available when officials sued in official capacity, D'Iorio v. County of Delaware, 592 F.2d 681, 690, n. 14 (3d Cir. 1978). "After Monell, it would appear that local government officials are suable in their official capacity for money damages or monetary equitable relief except when the imposition of such liability would amount to the imposition of respondeat superior liability on a local government unit not itself suable under the standards set forth in Monell. If the distinction drawn between money damages and equitable monetary relief is proper, it may be that an award of the latter type could not give rise to respondeat superior liability." Id. at 690, n. 14.

b. Immunity of Probation and Parole Officers

Parole Commission members may be liable for decisions to deny parole made in retaliation or so as to hinder exercise of federally protected rights, Williams v. Rhoden, 629 F.2d 1099 (5th Cir. 1980).

XI. D. 2. b. (Continued)

Officials participating in the parole release decision are entitled to good faith immunity from claims for money damages, DeShields v. United States Parole Comm'n., 593 F.2d 354 (8th Cir.1979).

Probation and parole officers, Henzel v. Gerstein, 608 F.2d 654 (5th Cir. 1979).

c. Immunity of Prison Officials

If the district court erred in placing too heavy a burden of showing good faith immunity on the defendant, rather than requiring the plaintiff to show bad faith, such error was harmless, Cruz v. Bato, 603 F.2d 1178 (5th Cir. 1979). The defendant had segregated all the prisoners who were represented by plaintiff attorney and prohibited her from communicating with any other prisoners.

Officials' immunity established, based on fact that prisoner's right to due process procedures prior to his transfer to administrative segregation was not clearly established in November 1977, Raffone v. Robinson, 607 F.2d 1058 (2d Cir. 1979).

Where defendant jailer held plaintiff in prison without authority, he had the burden of presenting evidence of objective facts upon which he could have based a good faith, reasonable belief that he had the authority to continue to hold the plaintiff, Douthit v. Jones, 619 F.2d 527 (5th Cir. 1980).

Prison officials not charged with knowledge of opinion which had been announced but not published, Withers v. Levine, 615 F.2d 158 (4th Cir. 1980).

XI. D. 2. c. (Continued)

Where prison officials base their defense on institutional security, they have the burden of going forward with evidence. If they produce evidence, the courts are to defer to the judgment of prison officials. Plaintiff has the burden of proving by substantial evidence that security concerns were unreasonable or the officials responses were exagerated, St. Claire v. Cuyler, ____ F.2d ____ (3d Cir. 11/6/1980).

Chapman v. Pickett, 586 F.2d 22 (7th Cir. 1978); Bogard v. Cook, 586 F.2d 399 (5th Cir. 1978); Buise v. Hudkins, 584 F.2d 223 (7th Cir. 1978).

"Deliberate indifference" required to show denial of medical treatment negates immunity, Fiedler v. Bosshard, 590 F.2d 105 (5th Cir. 1979).

Winsett v. McGinnes, 617 F.2d 996 (3d Cir. 1980).

d. Immunity of Sheriff

Sheriff immune for execution of arrest warrant, Turner v. Raynes, 611 F.2d 92 (5th Cir. 1980).

Fiedler v. Basshard, 590 F.2d 105 (5th Cir. 1979); Baskin v. Parker, 602 F.2d 1205 (5th Cir. 1979).

e. Immunity of Court Officials Such as Clerks of Court and Court Reporters

Failure to perform ministerial duty - quasi judicial immunity, Morrison v. Jones, 607 F.2d 1269 (9th Cir. 1979).

Court reporter entitled to good faith immunity, Rheuark v. Shaw, 628 F.2d 297 (5th Cir. 1980).

XI. D. 2. e. (Continued)

No absolute immunity for clerk, Williams v. Wood, 612 F.2d 982 (5th Cir. 1980).

3. Municipal Immunity

See Monell v. Department of Social Services: Municipal Liability for Section 1983 Actions, 10 U. of Toledo L. Rev. 519 (1979).

See Note, Monell v. Department of Social Services: One Step Forward and A Half Step Back for Municipal Liability Under Section 1983, 7 Hofstra L. Rev. 893 (1979); Municipal Liability Under Section 1983: The Meaning of "Policy of Custom", 79 Colum. L. Rev. 304 (1979); Civil Rights Litigation after Monell, 79 Colum. L. Rev. 213 (1979); Federal Courts - 42 U.S.C. Section 1983: The Impact of Monell v. Department of Social Services, 24 Vill. L. Rev. 1008 (1979); Comment, Section 1983 Municipal Liability and the Doctrine of Respondeat Superior, 46 U. Chi. L. Rev. 935 (1979).

Under Monell a police department is a "person". Dominguez v. Beame, 603 F.2d 337 (2d Cir. 1979). The plaintiff must show that "the governmental entity maintained or practiced an unconstitutional or unlawful 'policy' or 'custom'" and "that that policy or custom 'caused' or was the 'moving force' behind the violation." Id. at 341.

County not liable under Monell for court reporter's delay in preparing trial transcript and resulting delay in disposing of plaintiff's criminal appeal. The county did not contribute to the delay, Rheuark v. Shaw, 628 F.2d 297 (5th Cir. 1980).

Although failure to act by supervisory officials of municipality can constitute "policy or custom", in this case, failure to discipline police officer did not constitute official policy, Turpin v. Mailet, 619 F.2d 196 (2d Cir. 1980).

Municipal immunity upheld, Sala v. County of Suffolk, 604 F.2d 207 (2d Cir. 1979).

XI. D. 3. (Continued)

Municipality not entitled to good faith immunity, Owen v. City of Independence, 445 U.S. 622, 100 S.Ct. 1398, ____ L.Ed 2d ____ (4/16/1980).

Mancini v. Lester, 630 F.2d 990, n. 3 (3d Cir. 1980); Cole v. City of Covington, 586 F.2d 311 (4th Cir. 1978); Manquiz v. City of San Antonio, 586 F.2d 529 (5th Cir. 1978); Jones v. City of Memphis, 586 F.2d 622 (6th Cir. 1978); Garner v. Memphis Police Dep't, 600 F.2d 52 (6th Cir. 1979); Owens v. Haas, 601 F.2d 1242 (2d Cir. 1979); Owen v. City of Independence, 589 F.2d 335 (8th Cir. 1978); Baskin v. Parker, 602 F.2d 1205 (5th Cir. 1979).

4. Eleventh Amendment Immunity

District court properly ordered attorney fees to be paid out of state treasury where state officials expressed intent not to pay fees awarded, Gates v. Collier, 616 F.2d 1268 (5th Cir. 1980).

Remand for amendment of complaint to substitute state officials for state to avoid Eleventh Amendment immunity problems (prospective relief sought), Spicer v. Hilton, 618 F.2d 232 (3d Cir. 1980).

Immunity of state agency, Blake v. Kline, 612 F.2d 719 (3d Cir. 1979).

5. Actions Taken in Accordance With Court Order

Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979).

XII. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Motion to dismiss treated as motion for summary judgment, Jensen v. Klecker, 599 F.2d 243 (8th Cir. 1979). Plaintiff must be given opportunity to respond, Jensen v. Klecker, 599 F.2d 243 (8th Cir. 1979); Davis v. Zahradnick, 600 F.2d 458 (4th Cir. 1979).

Plaintiff is required to plead facts with specificity, U.S. v. Philadelphia, ____ F.2d ____ (3d Cir. 12/29/1980); Kauffman v. Moss, 420 F.2d 1270, 1275 (3d Cir. 1970).

Plaintiff should be given opportunity to amend complaint prior to dismissal, U.S. ex rel Walker v. Fayette County, 599 F.2d 573 (3d Cir. 1979).

Complaint must allege the conduct which allegedly violated the plaintiff's constitutional rights - time, place and those responsible, Boykins v. Ambridge Area School Dist., 621 F.2d 75 (3d Cir. 1980).

Allegation of complaint too vague, Leonardo v. Moran, 611 F.2d 397 (1st Cir. 1979).

District court erred in dismissing "John Doe" complaint. Court should have ordered named defendant to identify others, Maclin v. Paulson, 627 F.2d 83 (7th Cir. 1980). Accord, Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980)(district court should have permitted plaintiff to discover identity of John Doe defendants through discovery).

Conspiracy can be the basis for a claim under Section 1983, Crowe v. Lucas, 595 F.2d 985, 990 (5th Cir. 1979); Phillips v. Trello, 502 F.2d 1000, 1004 (3d Cir. 1974). The plaintiff must prove both the conspiracy and deprivation of his rights, Landrigan v. City of Warwick, 628 F.2d 736 (1st Cir. 1980)(Here the defendants' alleged conspiracy to prevent plaintiff from filing a tort action against one of the defendants was unsuccessful since the plaintiff had recovered in his tort action. Therefore, there was no Section 1983 claim for conspiracy).

XII. (Continued)

Construing the complaint - Haines (404 U.S. 519, 520 (1972)) standard applies to complaints containing "specific allegations of unconstitutional conduct," but complaints containing only "vague and conclusory allegations" should be dismissed, Ross v. Detective Meagan, ____ F.2d ____ (3d Cir. 1/16/1981).

Allegations of conspiracy must be clearly alleged, Henzel v. Gerstein, 608 F.2d 654 (5th Cir. 1979); Slotnick v. Garfinkle, 632 F.2d 163 (1st Cir. 1980).

Plaintiff must allege bad faith to state a cause of action, Gomez v. Toledo, 602 F.2d 1018 (1st Cir. 1979).

XIII. MOTION FOR SUMMARY JUDGMENT

Defendant's motion for summary judgment properly granted where plaintiff's affidavits did not comply with Rule 56, Maiorana v. MacDonald, 596 F.2d 1072 (1st Cir. 1979). See also, Cummings v. Roberts, 628 F.2d 1065 (8th Cir. 1980).

Prison records which contained self-serving statements of the defendants were improperly considered, Bracey v. Herringa, 466 F.2d 702 (7th Cir. 1972). The propriety of granting a motion for summary judgment against a prisoner in solitary confinement was questioned but not considered. The court stated:

> There obviously exists a serious initial question of whether the summary judgment procedure should ever be employed against an incarcerated party, particularly against one held in solitary confinement, in view of the language of Fed. R. Civ. P. 56(f).

Id.

Summary judgment usually should not be granted before discovery is completed. This is particularly true where the plaintiff is a pro se prisoner who is hampered in discovery, Murrell v. Bennett, 615 F.2d 306 (5th Cir. 1980).

The court did not err in denying plaintiff's request for additional time to complete discovery relating to summary judgment, Walters v. City of Ocean Springs, 625 F.2d 1317 (5th Cir. 1980).

Verified complaint can be treated as affidavit under Rule 56(e) when it meets the requirements of that rule, Martinez v. Rosado, 614 F.2d 829 (2d Cir. 1980).

District court must advise pro se litigant of his right to file opposing affidavits, Jensen v. Kiecker, 599 F.2d 243 (8th Cir. 1979).

Summary judgment when qualified immunity is asserted - competing considerations, Maiorana v. MacDonald, 596 F.2d 1072 (1st Cir. 1979).

XIV. ABATEMENT OF ACTION UPON DEATH OF A PARTY

Action cannot be brought for actions occurring after victim's death, Whitehearst v. Wright, 592 F.2d 834 (5th Cir. 1979).

No cause of action under Section 1983 against law enforcement officers who allegedly conspired to cover up the wrongful actions of other law enforcement officers who shot and killed plaintiff administratrix' deceased. Since the victim died before the defendants acted, he was not a "person" for purposes of Section 1983, Gayton v. Phillips, 606 F.2d 248 (9th Cir. 1979).

Bivens claim - federal law determines survivorship, Carlson v. Green, 446 U.S. 14, 100 S.Ct. 1468, ____ L.Ed 2d ____ (1980).

Davis v. Oregon State Univ., 591 F.2d 493 (9th Cir. 1978).

XV. CLASS ACTIONS BY PRO SE PLAINTIFFS

Effect of class action on individual suit by member of class, Bogard v. Cook, 586 F.2d 399 (5th Cir. 1978); Brown v. Vermillion, 593 F.2d 321 (8th Cir. 1979); Crawford v. Bell, 599 F.2d 890 (9th Cir. 1979)(when individual plaintiff alleges additional claims not included in class action, they should be heard).

XVI. PENDANT JURISDICTION

Landrigan v. City of Warwick, 628 F.2d 736 (1st Cir. 1980).

XVII. RELIEF

A. Damages

1. Nominal Damages

Lokey v. Richardson, 600 F.2d 1265 (9th Cir. 1979).

2. Compensatory Damages

Damages for emotional stress can be recovered, Morrow v. Igleburger, 584 F.2d 767 (6th Cir. 1978); Rhodes v. Robinson, 612 F.2d 766 (3d Cir. 1979).

Where plaintiff joined 1983 action with the state tort action and both were based on same facts, plaintiff could not recover money damages on both claims, Clappier v. Flynn, 605 F.2d 519, 528-29 (10th Cir. 1979).

Konzak v. Tyrrell, 603 F.2d 13 (7th Cir. 1979); Baskin v. Parker, 602 F.2d 1205 (5th Cir. 1979)

3. Punitive Damages

Carlson v. Green, 446 U.S. 14, 100 S.Ct. 1468, ____ L.Ed 2d ___ (1980)(Bivens action).

Konzak v. Tyrrell, 603 F.2d 13 (7th Cir. 1979).

Punitive damages discretionary, Wood v. Worachek, 618 F.2d 1225 (7th Cir. 1980).

☆ U. S. GOVERNMENT PRINTING OFFICE : 1981 339-607/8188

XVII. B. Injunctive Relief

Problems of courts when defendants claim inadequate finances, Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980).

No error in refusing to expunge records of disciplinary committee ruling where plaintiff, a federal prisoner, failed to exhaust administrative prison remedies, Lane v. Hanberry, 593 F.2d 648 (5th Cir. 1979).

District court did not err in directing warden to notify other wardens of injunctive relief granted, although other wardens were not thereby required to comply, Thompson v. Capps, 626 F.2d 389 (5th Cir. 1980) (Warden required to familiarize himself and all custodial personnel with the records of any mentally or emotionally disturbed prisoner and to establish appropriate places for their confinement).

Hansen v. Circuit Court of First Judicial Circuit of Ill., 591 F.2d 404 (7th Cir. 1979).

District court to consider requiring progress reports from defendants, Burks v. Teasdale, 603 F.2d 59 (8th Cir. 1979).

When prison officials have complied with injunction and the prison complies with the constitution, district court should discontinue exercise of its jurisdiction and dismiss, Taylor v. Sterrett, 600 F.2d 1135 (5th Cir. 1979).