**Opinions for the week of July 25 - July 29, 2016**

**John Martin v. Brian Foster** No. 16-1259
Argued July 7, 2016 — Decided July 25, 2016
Case Type: Prisoner
Eastern District of Wisconsin. No. 13-CV-1364 — **Nancy Joseph**, *Magistrate Judge*.
Before DIANE P. WOOD, *Chief Judge;* WILLIAM J. BAUER, *Circuit Judge;* MICHAEL S. KANNE, *Circuit Judge.*

**ORDER**
After a first trial that ended in acquittals on two charges and a mistrial on two others, appellant John Martin was found guilty of a single count of child enticement in violation of Wisconsin law. See WIS. STAT. § 948.07. He was sentenced as a repeat offender to mandatory life imprisonment. In Wisconsin, child enticement is defined as luring, or attempting to lure, a minor into a "vehicle, building, room, or secluded place" for any of several enumerated unlawful purposes, including engaging in sexual contact or intercourse with the minor. *Id.* Martin's conviction rests on five handwritten notes encouraging "C.P.G.," his 15-year-old victim, to engage in sexual activity. Although he stipulated to the admission of those notes, he argued that the "secluded place" element was not met. That defense did not prevail… We end by noting another problem with Martin's argument about the Confrontation Clause—indeed, with the entire premise of his claim of ineffective assistance. The falsity of C.P.G.'s previous accusation has never been established; we have only the police officer's opinion that she was lying. This distinguishes Martin's case from *Sussman*, 636 F.3d at 338, and *Redmond*, 240 F.3d at 591, where the falsity was either admitted or convincingly demonstrated. Although the state court assumed that C.P.G. had falsely accused the neighbor, there is little in the record to support that assumption. Accordingly, we AFFIRM the judgment of the district court denying Martin's § 2254 petition.

**Patrick Thelen v. James Cross, Jr.** Nos. 15-3665 & 16-1207
Submitted July 22, 2016 — Decided July 25, 2016
Case Type: Prisoner
Southern District of Illinois. No. 15-cv-116-MJR — **Michael J. Reagan**, *Chief Judge.*
Before DIANE P. WOOD, *Chief Judge;* ILANA DIAMOND ROVNER, *Circuit Judge;* DAVID F. HAMILTON, *Circuit Judge.*

**ORDER**
Invoking *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), and the Administrative Procedures Act, Patrick Thelen, a federal inmate, seeks damages on two claims. First he wants compensation for serving an allegedly unconstitutional sentence, even though courts have repeatedly rejected his collateral attacks. Second he argues that, by not providing him with a copy of the Federal Register, the warden prevented him from commenting on a proposed rule change. The district court dismissed the complaint at screening for failure to state a claim, see 28 U.S.C. § 1915A. These appeals are frivolous. Thelen may not seek damages for his sentence without first having it vacated through a proper collateral attack, and the lack of a copy of the Federal Register produced no cognizable injury. We therefore affirm the judgments.

**USA v. Joseph Furando** No. 16-1157
Argued, July 7, 2016 — Decided July 25, 2016
Case Type: Criminal
Southern District of Indiana, Indianapolis Division. No. 1:13-cr-00189-SEB-TAB-4 — **Sarah Evans Barker**, *Judge,*
Before DIANE P. WOOD, *Chief Judge;* WILLIAM J. BAUER, *Circuit Judge;* MICHAEL S. KANNE, *Circuit Judge.*

**ORDER**
This appeal is frivolous. Joseph Furando pleaded guilty to conspiracy, wire fraud, lying to federal investigators, and money laundering. At sentencing, he asked the district court to give him credit for acceptance of responsibility even though he had committed a number of crimes and threatened to kill prosecution witnesses after being indicted. The district court found that Furando had not accepted responsibility, and he challenges only that decision. We affirm Furando's sentence.

**Livell Figgs v. Alex Dawson** No. 15-2926
Argued May 27, 2016 — Decided July 25, 2016
Case Type: Civil
Central District of Illinois. No. 3:13-cv-03218-CSB-EIL — **Colin S. Bruce**, *Judge.*
Before POSNER and FLAUM, *Circuit Judges*, and ALONSO, *District Judge.*

ALONSO, *District Judge.* Plaintiff, Livell Figgs, was convicted of murder and sentenced to 40 years' imprisonment in the Illinois Department of Corrections ("IDOC"). He served the latter part of his sentence at Logan Correctional Center and was released on June 28, 2012 after having survived summary judgment in
his state-court mandamus proceeding in which he alleged that his release date had been miscalculated. Figgs then brought this § 1983 action against prison
officials at Logan, alleging, among other things, that they had been deliberately indifferent to the possibility that he was being held unlawfully. Figgs now appeals from the district court's grant of summary judgment in favor of the defendants.

**Wynston Day v. Staci Arbuckle** No. 15-2912
Submitted June 30, 2016 — Decided July 25, 2016
Case Type: Prisoner
Southern District of Illinois. No. 14-cv-00971-MJR-SCW — **Michael J. Reagan**, *Chief Judge.*
Before WILLIAM J. BAUER, *Circuit Judge;* JOEL M. FLAUM, *Circuit Judge;* MICHAEL S. KANNE, *Circuit Judge.*

**ORDER**
Wynston Day, an Illinois prisoner, appeals the grant of summary judgment for the defendant prison officials in this civil-rights suit on grounds that he failed to exhaust administrative remedies. We affirm the judgment.

**Mikeal Cole, Jr. v. Carolyn Colvin** No. 15-3883
Argued July 6, 2016 — Decided July 26, 2016
Case Type: Civil
Northern District of Indiana, Fort Wayne Division. No. 1:14-cv-00198-RLM-SLC — **Robert L. Miller, Jr.**, *Judge.*
Before POSNER, SYKES, and HAMILTON, *Circuit Judges.*

POSNER, *Circuit Judge.* In this appeal from the district court's affirmance of the Social Security Administration's denial of social security disability benefits,
Mikael Cole, a 41-year-old man who has severe pain in his arms and groin and multiple gastrointestinal conditions as well, argues that the administrative law
judge assessed his credibility erroneously and failed to offer a reasoned basis for rejecting a consulting physician's medical opinion. Recently the Social Security Administration announced that it would no longer assess the "credibility" of an applicant's statements, but would instead focus on determining the

"intensity and persistence of [the applicant's] symptoms." Social Security Ruling 16-3p; "Titles II and XVI: Evaluation of Symptoms in Disability Claims," 81
Fed. Reg. 14166, 14167 (effective March 28, 2016). The change in wording is meant to clarify that administrative law judges aren't in the business of impeaching claimants' character; obviously administrative law judges will continue to assess the credibility of pain *assertions* by applicants, especially as such assertions often cannot be either credited or rejected on the basis of medical evidence… The administrative law judge also rejected Barbour's clinical findings as inconsistent with Coats's exam, which had "showed reduced range of motion of both [of Cole's] elbows, but normal power grip of five out of five and good coordination." Yet the administrative law judge had pronounced Coats's assessment of Cole's condition "internally inconsistent" and thus entitled to no "significant weight." The administrative law judge further stated that Barbour's report was inconsistent with the results of Kashyap's exams in 2012, which "were essentially normal." But this ignored the tension in Kashyap's report noted earlier in this opinion between the pain that Cole reported to him and the
results of Kashyap's diagnostic tests, results inconsistent as we just noted with Barbour's report. By relying on the reports of Coats and Kashyap to discount Barbour's opinion, the administrative law judge was cherry picking the medical record—which is improper. See *Price v. Colvin*, 794 F.3d 836, 839–40 (7th Cir. 2015); *Yurt v. Colvin*, 758 F.3d 850, 859 (7th Cir. 2014); *Bates v. Colvin*, 736 F.3d 1093, 1099 (7th Cir. 2013). The administrative law judge's decision was unreasoned, and should not have been affirmed. The judgment of the district court is therefore reversed with instructions to remand the case to the Social Security Administration for reconsideration of the plaintiff's application for disability benefits.

**USA v. Sylvester Purham** No. 15-3403
Submitted June 3, 2016 — Decided July 26, 2016
Case Type: Criminal
Central District of Illinois. No. 12-30019 — **Sue E. Myerscough**, Judge.
Before MICHAEL S. KANNE, *Circuit Judge;* ILANA DIAMOND ROVNER, *Circuit Judge;* ROBERT M. DOW, JR., *District Judge.*

**ORDER**
Sylvester Purham has filed a third direct appeal of his conviction and sentence for his participation in a crack-cocaine conspiracy. Purham's appointed counsel believes that this successive appeal is frivolous and filed a motion to withdraw under *Anders v. California*, 386 U.S. 738 (1967). We grant counsel's *Anders* motion and dismiss this appeal. The background of this case is explained more fully in our opinion in Purham's second appeal, *see United States v. Purham (Purham II)*, 795 F.3d 761 (7th Cir. 2015), but we offer a brief summary. Purham pled guilty, without a plea agreement, to the charge of conspiracy to distribute 280 grams or more of crack cocaine in violation of 21 U.S.C. §§ 841, 846. Purham later tried to withdraw his guilty plea, but the district court, after a hearing, denied the request. The court sentenced Purham to 360 months' imprisonment and 10 years of supervised release. In his first appeal, Purham challenged the district court's relevant-conduct calculation and its imposition of a 4-level leadership enhancement. We reversed and remanded for resentencing, finding that the district court erred in including certain drug transactions as relevant conduct. *See United States v. Purham (Purham I)*, 754 F.3d 411 (7th Cir. 2014). On remand, the district court sentenced Purham to 324 months' imprisonment and 10 years of supervised release. Purham again appealed. We rejected all of his challenges, except for his challenge to two conditions of supervised release. *Purham II*, 795 F.3d at 768… In response to counsel's *Anders* brief, Purham identifies three issues he wishes to raise: that the district court erred in imposing a sentence of 324 months; that the district court did not give him notice of a variance at resentencing; and that the district court erred in accepting Purham's guilty plea. The first two issues are squarely foreclosed by *Purham II* in which we affirmed the 324-month term of imprisonment. As for Purham's claim of error in the district court's acceptance of his guilty plea, the issue could have been raised in *Purham I* and is now waived. Accordingly, counsel's *Anders* motion to withdraw is GRANTED, and this appeal is DISMISSED.

**Abelardo Arnobit v. Loretta Lynch** No. 15-3229
Submitted July 22, 2016 — Decided July 26, 2016
Case Type: Agency
Before DIANE P. WOOD, *Chief Judge;* ILANA DIAMOND ROVNER, *Circuit Judge;* DAVID F. HAMILTON, *Circuit Judge.*
Board of Immigration Appeals. No. A041-245-950

**ORDER**
Abelardo Barrientos Arnobit, a citizen of the Philippines, petitions pro se1 for review of a final order of the Board of Immigration Appeals affirming an immigration judge's denial of his request for a fourth continuance. We deny the petition.

**Shabi Hussain v. Federal Express Corporation** No. 15-2967
Argued July 7, 2016 — Decided July 26, 2016
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 12 C 7693 — **Thomas M. Durkin**, *Judge.*
Before DIANE P. WOOD, *Chief Judge;* WILLIAM J. BAUER, *Circuit Judge;* MICHAEL S. KANNE, *Circuit Judge.*

**ORDER**
Shabi Hussain, a woman of Indian descent, brought this action against her employer, Federal Express Corporation (FedEx), asserting claims under 42 U.S.C. § 2000e–2, for failing to promote her because of her sex and national origin. The district court granted summary judgment in FedEx's favor. We conclude, however, that Hussain raised genuine issues of material fact on both theories, and so we vacate the district court's order and remand.

**Mark J. Wittman v. Timothy A. Koenig** No. 15-2798
Argued February 16, 2016 — Decided July 26, 2016
Case Type: Bankruptcy from Bankruptcy Court
Western District of Wisconsin. No. 14-14446 — **Robert D. Martin**, *Judge.*
Before POSNER, WILLIAMS, and HAMILTON, *Circuit Judges.*

HAMILTON, *Circuit Judge.* The sole issue in this appeal is how to apply a Wisconsin statute that exempts from the assets available to creditors to execute judgments a debtor's annuity contract that "complies with the provisions of the internal revenue code." See Wis. Stat. § 815.18(3)(j)2.a. The Wisconsin statute does not specify which of the Internal Revenue Code's provisions (codified in Title 26 of the United States Code) an annuity must comply with to qualify for an exemption. But the statute does require us to construe the exemption to "secure its full benefit to debtors." Wis. Stat. § 815.18(1). In this case, debtors Timothy and Jill Koenig claimed exemptions under § 815.18(3)(j) for several annuity contracts they owned. The trustee challenged the exemptions. He argued
that an annuity, to qualify for the exemption, must comply with 26 U.S.C. §§ 401-09, which generally deal with tax-deferred "qualified" retirement plans. The
debtors argue that an annuity is exempt under § 815.18(3)(j) as long as the annuity qualifies for favorable tax treatment under 26 U.S.C. § 72, which deals with annuities more generally. The federal bankruptcy courts in Wisconsin have consistently agreed with the debtors' interpretation of the statute. We do too, so we affirm the judgment of the bankruptcy court. The key statutory text is ambiguous on the decisive point, but the statute's structure and purpose, along with the legislature's instruction to construe exemptions in favor of debtors, persuade us that the bankruptcy court and debtors are correct here.

**U.S. Bank National Association v. Cheryle Collins-Fuller T.** No. 15-2415

Submitted June 15, 2016* — Decided July 26, 2016
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 12 C 5057 — **Marvin E. Aspen**, *Judge.*
Before WOOD, *Chief Judge*, and POSNER and FLAUM, *Circuit Judges.*

WOOD, *Chief Judge.* In June 2012, U.S. Bank National Association, which has its main office in Ohio, filed this diversity suit asking for a foreclosure judgment on the mortgage of a residential property owned by defendants Heywood Fuller T. and Cheryle Collins-Fuller T., both citizens of Illinois (to whom we refer as the Fullers, since we are not sure what "T" stands for). See 28 U.S.C. § 1332(a)(1). U.S. Bank also named as a defendant KeyBank National Association, which held a junior mortgage on the property. After KeyBank was discovered also to be a citizen of Ohio, the district court granted U.S. Bank's motion voluntarily to dismiss the case without prejudice because diversity was lacking. See FED. R. CIV. P. 41(a)(2). The court also dismissed certain claims that the Fullers had asserted against Litton Loan Servicing, LLP, a nonparty, in their answer, because it had not been served with the third-party complaint.
The Fullers challenge the dismissal of both U.S. Bank's complaint and the claims they brought against Litton Loan. Because they cannot overcome the fundamental defects the district court identified, however, we affirm.

**Greg Griswold v. Brenda Zeddun** No. 16-1334
Submitted July 22, 2016 — Decided July 27, 2016
Case Type: Bankruptcy from District Court
Western District of Wisconsin No. 14-cv-718-jdp — **James D. Peterson**, *Judge.*
Before WOOD, *Chief Judge*, and ROVNER and HAMILTON, *Circuit Judges.*

PER CURIAM. This appeal illustrates how courts should determine whether a debtor in bankruptcy received reasonably equivalent value in deciding whether a pre-bankruptcy transfer of the debtor's property amounted to a fraudulent transfer under 11 U.S.C. § 548(a)(1)(B). The bankruptcy court found that a transfer of a farm in this case was fraudulent and avoided the transfer. The district court affirmed, and so do we.

**Alvernest Kennedy v. Charles Huibregtse** No. 15-3743
Argued July 6, 2016 — Decided July 27, 2016
Case Type: Prisoner
Eastern District of Wisconsin. No. 2:13-cv-00004-WCG — **William C. Griesbach**, *Chief Judge.*
Before POSNER, SYKES, and HAMILTON, *Circuit Judges.*

POSNER, *Circuit Judge*. The plaintiff, an inmate of a Wisconsin state prison, filed this *in forma pauperis* suit against the defendants, who are prison doctors, in federal district court. The suit alleges deliberate indifference to the plaintiff's medical needs, in violation of 42 U.S.C. § 1983, and also medical malpractice in violation of Wisconsin law. A Latin phrase, *in forma pauperis* means "in the character or manner of a pauper" and entitles an indigent to sue without having to pay the full court fees or costs in advance, though if he is not utterly penniless he can be required to make partial payment. 28 U.S.C. §§ 1915(a), (b). In the course of the district court proceedings the defendants learned that in seeking permission to litigate *in forma pauperis* the plaintiff had failed to disclose that he had approximately $1400 in a trust account outside the prison. On the basis of that information the defendants successfully moved the district judge to dismiss the suit pursuant to 28 U.S.C. § 1915(e)(2)(A), which states that "the court shall dismiss the case at any time if the court determines that … the allegation of poverty is untrue." The dismissal was with prejudice, thus barring the plaintiff (if we affirm) from refiling, as he could do had the dismissal been without prejudice, provided the statute of limitations had not run… No matter. For the reasons set forth earlier in this opinion the judgment of the district court must be, and so it is, AFFIRMED.

**USA v. Carey Ray** Nos. 14-3799 & 15-3193
Argued March 29, 2016 — Decided July 27, 2016
Case Type: Criminal
Northern District of Indiana, Hammond Division. No. 2:12-CR-171 — **James T. Moody**, *Judge.*
Before FLAUM, EASTERBROOK, and SYKES, *Circuit Judges.*

EASTERBROOK, *Circuit Judge*. When he was 29, Carey Ray started to chat over the Internet with a 14-year-old girl, called "Alexia" to protect her identity. At their first in-person meeting Ray plied Alexia with marijuana and cognac. At their second he took her to a motel (crossing from Indiana into Illinois), where marijuana and alcohol were followed by sexual intercourse. The jury in this criminal prosecution was entitled to find that Ray knew Alexia to be 14 (so that she *could not* legally consent to sex) and that Ray used drugs and force to overcome her resistance (so that she *did not* consent). Ray has been convicted of violating 18 U.S.C. §2423(a) (knowingly transporting a minor across state lines to engage in criminal sexual activity) and sentenced to 320 months in prison plus 15 years of supervised release… In this case the district court jumped the gun and modified nine conditions while Ray's original appeal was pending. The appropriate remedy is the same as in *Thompson*: a remand for full resentencing. The district court should circulate the text of all proposed conditions to the parties before the resentencing and allow each side an opportunity to make whatever objections and arguments the litigant deems appropriate. See *United States v. Bloch*, No. 15-1648 (7th Cir. June 17, 2016), slip op. 14–15. When resolving the parties' contentions, the district judge will be able to consider the effect of appellate decisions that postdate the modification in September 2015. Ray's conviction is affirmed, but the sentence is vacated and the case is remanded for resentencing.

**USA v. Miles Musgraves** No. 15-2371
Argued February 24, 2016 — Decided July 27, 2016
Case Type: Criminal
Southern District of Illinois. No. 3:13-CR-30276-MJR — **Michael J. Reagan**, *Chief Judge.*
Before EASTERBROOK, ROVNER, and HAMILTON, *Circuit Judges.*

HAMILTON, *Circuit Judge*. In 2015, defendant Miles Mus- graves was convicted of five crimes stemming from his life as a drug dealer-turned-informant. His appeal challenges the search warrant for his apartment, the sufficiency of evidence on three of his convictions, and his sentence as a career offender. We affirm in part and reverse in part.

**Carole Cheney v. Standard Insurance Company** No. 15-1794
Argued January 20, 2016 — Decided July 27, 2016
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 13 C 4269 — **Susan E. Cox**, *Magistrate Judge.*
Before WOOD, *Chief Judge,* and MANION and ROVNER, *Circuit Judges.*

WOOD, *Chief Judge*. Carole Cheney was an attorney at Kirkland & Ellis, LLP (Kirkland) for approximately 20 years. She became a partner at the firm in 1997.
She suffered from a spinal disease that first led her to seek accommodations in 1994, and ultimately resulted in a three-level anterior cervical discectomy
and fusion and removal of her C5 vertebra in 2012. Although Cheney had managed to work for many years despite her condition, by 2012 she had had enough, and so she submitted a claim for long-term disability benefits in July 2012. Standard Insurance Company ("Standard")1, Kirkland's insurer, denied her claim

based on a finding that her coverage had ended in March of 2012, and that she was able at least through March to perform her job. (Although Standard's initial denial used the March date, it never made that argument to the court and was thus not judicially estopped from arguing later, as it did, that coverage ended in December 2011.) After Standard refused to reconsider its position, Cheney sued in federal district court, raising claims under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1132. The parties consented to the jurisdiction of the magistrate judge, 28 U.S.C. § 636(c), and agreed to a trial based on the stipulated paper record. The court found in favor of Cheney, and Standard appeals. Because the district court made unsupported factual findings and misinterpreted the governing documents, we vacate its decision and remand for a new trial.

**Eric Berg v. New York Life Insurance Company** No. 15-1410
Argued November 6, 2015 — Decided July 27, 2016
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 11 C 7939 — **Milton I. Shadur**, *Judge.*
Before WOOD, *Chief Judge*, and POSNER and EASTERBROOK, *Circuit Judges.*

WOOD, *Chief Judge.* Eric Berg brought this breach of contract action when New York Life, through its administrator Unum, refused to pay him disability
benefits. At bottom, this case turns on the meaning of one phrase: "requires and receives regular care by a Physician." Does the clause contain a temporal element? The insurers say yes, and the district court agreed, granting them summary judgment. But it certainly says nothing about timing on its face, and we can find no other sign that such a requirement was meant to be engrafted onto the phrase. Applying the basic principle that the language must be construed against the insurers, we reverse the judgment of the district court.

**Patrick Giddeon v. Edward Flynn** No. 15-3464
Submitted June 15, 2016 — Decided July 28, 2016
Case Type: Prisoner
Eastern District of Wisconsin. No. 2:14-cv-00331-RTR — **Rudolph T. Randa**, *Judge.*
Before WOOD, *Chief Judge*, and POSNER and FLAUM, *Circuit Judges.*

POSNER, *Circuit Judge*. Patrick Giddeon sued the City of Milwaukee and several of its police officers under 42 U.S.C. § 1983, claiming that the police had violated his civil rights three times in quick succession by unlawfully stopping a car in which he was a passenger and arresting him, placing him in the back seat of their uncomfortably hot squad car while they searched the stopped car, and after they found a gun in that car eliciting from him (while he was still in the squad car) an admission that it was indeed his gun. The district court granted summary judgment for the defendants, prompting this appeal… The judgment is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

**FTI Consulting, Inc. v. Merit Management Group, LP** No. 15-3388
Argued March 30, 2016 — Decided July 28, 2016
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 11 C 7670 — **Joan B. Gottschall**, *Judge.*
Before WOOD, *Chief Judge,* and POSNER and ROVNER, *Circuit Judges.*

WOOD, *Chief Judge*. This case requires us to examine section 546(e) of the Bankruptcy Code, which provides a safe harbor protecting certain transfers from being undone by the bankruptcy trustee. (We considered a different aspect of that statute in *Peterson v. Somers Dublin Ltd.*, 729 F.3d 741 (7th Cir. 2013), which focused on what counts as a settlement payment made in connection with a securities

contract, questions that do not arise in our case.) The safe harbor prohibits the trustee from avoiding transfers that are “margin payment[s]” or “settlement payment[s]” “made by or to (or for the benefit of)” certain entities including commodity brokers, securities clearing agencies, and “financial institutions.” 11 U.S.C. § 546(e). It also protects transfers “made by or to (or for the benefit of)” the same types of entities “in connection with a securities con- tract.” *Id.* Ultimately, we find it necessary to answer only one question: whether the section 546(e) safe harbor protects transfers that are simply conducted *through* financial institutions (or the other entities named in section 546(e)), where the entity is neither the debtor nor the transferee but only the conduit. We hold that it does not, and accordingly we reverse the judgment of the district court.

**USA v. Willie J. Hill** No. 15-3161
Submitted July 18, 2016 — Decided July 28, 2016
Case Type: Criminal
Southern District of Indiana, Indianapolis Division. No. 1:93-cr-00148-LJM-KPF — **Larry J. McKinney**, *Judge.*
Before DIANE P. WOOD, *Chief Judge;* FRANK H. EASTERBROOK, *Circuit Judge;* KENNETH F. RIPPLE, *Circuit Judge.*

**Order**
Willie Hill is serving a term of 500 months’ imprisonment, imposed more than 20 years ago, for distributing substantial quantities of both crack and powder
cocaine. See *United States v. Duff*, 76 F.3d 122 (7th Cir. 1996). The Sentencing Commission has several times reduced the Guideline range for crack-cocaine convictions and made those reductions retroactive, but these changes did not affect persons such as Hill who distributed powder cocaine. The
most recent set of retroactive reductions, however, is a two-level decrease for most drug offenses. See Amendment 782 (adopted November 2014). Hill asked the district court to cut his sentence under Amendment 782. The court declined, however, observing that although Amendment 782 changes Hill’s offense level it does not affect his recommended Guideline range—and under 18 U.S.C. §3582(c)(2) only a defendant whose “sentencing range” has been reduced may benefit from a retroactive amendment… Hill maintains that he should have been held accountable for only 1.5 kilograms of crack and 1.5 kilograms of powder cocaine, and that changing his relevant conduct in this fashion would substantially cut his sentencing range. But §3582(c)(2) does not authorize full resentencing. *Dillon v. United States*, 560 U.S. 817 (2010). It requires the district court to make modifications specified by the retroactive change while taking other calculations as given. *United States v. Wren*, 706 F.3d 861 (7th Cir. 2013); U.S.S.G. §1B1.10(b)(1) & Application Note 2. Under that approach, Hill’s sentencing range remains 360 months to life, and his request for a lower sentence was properly denied. AFFIRMED

**Kimberly Hively v. Ivy Tech Community College** No. 15-1720
Argued September 30, 2015 — Decided July 28, 2016
Case Type: Civil
Northern District of Indiana, South Bend Division. No. 3:14-cv-1791 — **Rudy Lozano**, Judge.
Before BAUER, RIPPLE, and ROVNER, *Circuit Judges.*
RIPPLE, *Circuit Judge,* joins the judgment of the court and joins Parts I and IIA of the panel’s opinion.

ROVNER, *Circuit Judge.* Once again this court is asked to consider whether Title VII of the Civil Rights Act of 1964 protects employees from or offers redress for discrimination based on sexual orientation. This time, however, we do so in the shadow of a criticism from the Equal Employment Opportunity Commission (EEOC) that this court and others have continued to reflexively declare that sexual orientation is not cognizable under Title VII without due analysis or consideration of intervening case law. The EEOC’s criticism has created a groundswell of questions about the rationale for denying sexual orientation claims

while allowing nearly indistinguishable gender non-conformity claims, which courts have long recognized as a form of sex-based discrimination under Title VII.
After a careful analysis of our precedent, however, this court must conclude that Kimberly Hively has failed to state a claim under Title VII for sex discrimination; her claim is solely for sexual orientation discrimination which is beyond the scope of the statute. Consequently, we affirm the decision of the district court.

**USA v. David A. Resnick** No. 14-3791
Decided July 28, 2016
Case Type: Criminal
Northern District of Indiana, Hammond Division. No. 2:11 CR 68 — **James T. Moody**, *Judge.*
On Petition for Rehearing En Banc.
Before WOOD, *Chief Judge*, BAUER, POSNER, FLAUM, EASTERBROOK, KANNE, ROVNER, WILLIAMS, SYKES, and HAMILTON, *Circuit Judges.*

WOOD, *Chief Judge.* On consideration of the petition for rehearing with suggestion for rehearing en banc filed by defendant-appellant on June 7, 2016, a
majority of the judges on the original panel voted to deny rehearing and a majority of the judges in active service voted to deny rehearing en banc. Judge William J. Bauer voted to grant rehearing but did not take part in the vote to rehear en banc. Judges Richard A. Posner, Joel M. Flaum, and Michael S. Kanne voted to grant rehearing en banc. Judges Bauer, Posner, Flaum, and Kanne dissented from the denial of the rehearing and rehearing en banc and filed an opinion. The petition is therefore DENIED.

**Leland Stevens v. Interactive Financial Advisors** No. 15-2130
Argued June 1, 2016 — Decided July 29, 2016
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 11 C 2223 — **Matthew F. Kennelly**, *Judge.*
Before WOOD, *Chief Judge,* and BAUER and FLAUM, *Circuit Judges.*

BAUER, *Circuit Judge.* Plaintiff-appellant, Leland O. Stevens ("Stevens"), is a self-employed financial advisor. He claims that defendants-appellees, Independent Financial Advisors, Inc. ("IFA") and Redtail Technologies, Inc. ("Redtail") (collectively, "the defendants"), stole his clients' nonpublic personal information. Believing that he had a property right to this private information, Stevens sued the defendants for conversion and other claims on behalf of himself and his eponymous corporation. The district court granted summary judgment for the defendants on some of Stevens' claims, and a jury found for the defendants on the remaining claims. Stevens now appeals the district court's grant of summary judgment, as well as a supplemental jury instruction that the district court gave during trial. We affirm both of the district court's actions.

**USA v. Walter Blackman** No. 15-2003
Argued April 13, 2016 — Decided July 29, 2016
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 13-CR-268— **Edmond E. Chang**, *Judge.*
Before EASTERBROOK, MANION, and ROVNER, *Circuit Judges.*

ROVNER, *Circuit Judge.*Walter Blackman pleaded guilty to one count of distributing a controlled substance, in violation of 21 U.S.C. §841(a)(1), and the district court ordered him to serve a prison term of 180 months. In this appeal, he challenges the district court's finding that he was responsible for the un-charged distribution of 3,000 grams of crack cocaine to one of his customers as relevant conduct and its additional finding that he possessed a firearm during his narcotics distribution. We find no error in either

determination, nor do we agree with Blackman's contention that the district court committed procedural error by failing to address two of his principal arguments in mitigation… The district court did a thorough and conscientious job in assessing Blackman's relevant conduct and arriving at an appropriate sentence. The court did not clearly err in holding Blackman responsible for an additional three kilograms of crack cocaine or for the possession of a firearm during his relevant conduct. Nor did the court commit any procedural error in resolving defendant's arguments in mitigation. The sentence is AFFIRMED.

**Bankers Life & Casualty Insurance v. CBRE, Inc.** No. 15-1471
Argued December 10, 2015 — Decided July 29, 2016
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 14 C 7907 — **Harry D. Leinenweber**, *Judge.*
Before POSNER, MANION, and SYKES, *Circuit Judges.*
SYKES, *Circuit Judge*, dissenting.

POSNER, *Circuit Judge.*A dispute between the parties was referred to a panel of arbitrators, who voted in favor of CBRE, a large real estate company. Its opponent, Bankers, an insurance company, challenged the arbitrators' decision in federal district court, lost there, and appeals. In 2011 Bankers leased office space at 600 West Chicago Avenue in Chicago. Its lease was set to expire in 2018. Another tenant in the building was Groupon, the well-known online merchant, which needed more office space. CBRE approached Bankers about the possibility of Bankers' subleasing its space in the building to Groupon and relocating elsewhere, and Bankers responded to CBRE's overtures by hiring it to negotiate a sublease to Groupon and find an alternative location for Bankers. Bankers and CBRE signed a Listing Agreement which provided that CBRE would "accept delivery of and present [to Bankers] all offers and counteroffers to buy, sell, or lease … property" of Bankers; "would assist [Bankers] in developing, communicating, negotiating, and presenting offers, counteroffers, and notices"; and would "answer [Bankers'] questions relating to the offers, counter-offers, notices, and contingencies." These terms were required by Illinois law. 225 ILCS 454/15-5(a), 15-75… Because the parties bargained for a reasoned award, reasoning should be part of the "face of the award." But the award in this case was based on documents outside the parties' agreement and ignored the agreement itself—the Listing Agreement. Cf. *Rauh v. Rockford Products Corp.*, *supra*, 574 N.E.2d at 644. The arbitration panel realized or at least sensed that it had ignored the Listing Agreement when it issued its June revision of the award, but the new reasoning in that revision confused the cost-benefit analyses with the Listing Agreement. The district court should not have upheld the award. Its judgment is therefore reversed and the case remanded for further proceedings consistent with this opinion. REVERSED AND REMANDED

Only the text of the opinions is used. No editorial comment is added. For back issues or to send a comment, please contact Sonja Simpson.