

Opinions for the week of September 19 - September 23, 2016

Timothy Bell v. Eugene McAdory No. 16-3420

Submitted September 15, 2016 — Decided September 19, 2016

Case Type: Civil

Central District of Illinois. No. 12-3138-CSB-DGB — **Colin S. Bruce**, *Judge*.

Before RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*.

Order

After Timothy Bell had filed a notice of appeal (No. 15-1036), the district court denied a motion to extend the time for appeal. See Fed. R. App. P. 4(a)(5).

Bell has filed another notice of appeal, directed to that order. The only appealable order in this case is the district court's final decision. Procedural matters such as orders under Rule 4(a)(5) are not separately appealable. Instead they are reviewable in the initial appeal. The current appeal therefore is dismissed for want of jurisdiction.

Mark Alan Lane v. Dan Murrie No. 16-2853

Submitted September 7, 2016 — Decided September 19, 2016

Case Type: Prisoner

Southern District of Indiana, Evansville Division. No. 3:16-cv-00045-JMS-MPB — **Jane E. Magnus-Stinson**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*.

ORDER

Mark Lane, who is serving a 30-year prison sentence for federal drug crimes, brought this action under 42 U.S.C. § 1983 against Dan Murrie, a state prosecutor. Lane contends that Murrie violated due process by failing to return property seized during a search of his home nearly 15 years ago, in 2001. According to Lane, the state failed to return to him items not subject to forfeiture, even after the federal and state forfeiture proceedings ended in 2003. The district court dismissed Lane's complaint at screening, see 28 U.S.C. § 1915A. It reasoned that Murrie is entitled to prosecutorial immunity, that Lane's complaint was untimely by roughly 13 years, and that the claim was precluded anyway because Lane had brought and lost the same claim in state court... **AFFIRMED.**

Michael Hughes v. James Dimas No. 16-1818

Submitted June 24, 2016 — Decided September 19, 2016

Case Type: Civil

Central District of Illinois. No. 4:15-cv-04163-JES — **James E. Shadid**, *Chief Judge*.

Before WOOD, *Chief Judge*, and POSNER and ROVNER, *Circuit Judges*.

POSNER, *Circuit Judge*. An Illinois state court ruled that Michael Hughes was a sexually violent person who suffers from a mental disorder that creates a substantial risk that unless confined he is apt to commit further sexual violence. And so the court ordered him to be civilly committed, pursuant to the state's Sexually Violent Persons Commitment Act, 725 ILCS 207/1–99, in the Rushville Treatment and Detention Facility, a state facility where he is to remain "for control, care and treatment" until he "is no longer a sexually violent person." See *id.* 207/40. In this suit under 42 U.S.C. § 1983, Hughes claims that the state has improperly curtailed his liberty, in violation of the Fourteenth Amendment, by employing staff at Rushville who are unable to provide him with the care and treatment without which he'll never be eligible for release. Because the Department of Human Services, which operates Rushville, has contracted with Liberty

Healthcare Corporation to provide sex-offender treatment to detainees there, Hughes names as defendants Liberty Healthcare along with eleven persons, including James Dimas, the Secretary of the Department of Human Services, Rushville's clinical director, and five therapists employed by the facility... The suit having been dismissed prematurely, the judgment of the district court is REVERSED AND REMANDED.

Anthony Boyce v. Illinois Department of Correct No. 16-1710

Submitted September 7, 2016 — Decided September 19, 2016

Case Type: Prisoner

Central District of Illinois. No. 16-1028 — **Harold A. Baker**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*.

ORDER

Anthony Boyce, an Illinois prisoner, suffered nerve damage from a gunshot wound to his neck. A specialist investigating Boyce's complaints of chronic pain from that condition and from persistent dry mouth (which, Boyce alleges, makes eating, drinking, and swallowing difficult and causes tooth decay) prescribed a drug for nerve pain and recommended that Boyce use a nonprescription, medicated mouthwash. The specialist also recommended that Boyce return in a year if his symptoms did not improve. According to Boyce, doctors and administrators at the Pontiac Correctional Center initially approved this course of treatment but then, in an effort to save money, stopped supplying the mouthwash and refused to send him back to the specialist despite intensifying pain. Boyce alleges in this suit under 42 U.S.C. § 1983 that these actions denied him appropriate medical care in violation of the Eighth Amendment. The district court dismissed the complaint at screening, see 28 U.S.C. § 1915A, reasoning that Boyce had filed suit without first exhausting available administrative remedies as required by the Prison Litigation Reform Act, see 42 U.S.C. § 1997e(a). Because an exhaustion defense is not evident from Boyce's complaint, we vacate the judgment and remand.

Mike Russell v. County of Cook No. 15-3111

Argued September 14, 2016 — Decided September 19, 2016

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 14 C 4683 — **John W. Darrah**, *Judge*.

Before RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

Order

Mike Russell contends in this suit under 42 U.S.C. §1983 that a fellow pretrial detainee in Cook County Jail stabbed him, and that the defendants are culpable for failing to heed his warnings that an attack was imminent (but preventable). The district court dismissed the suit as barred by a release that Russell gave in an earlier suit. Russell released all claims "against Cook County which occurred while [he] was housed in the Cook County Jail within the two year period prior to the execution date of this Agreement". Russell's signature on the release is dated February 21, 2014, and the attack of which he now complains occurred on March 13, 2014. But the district court found that Russell had entered a false date. He could not have signed on February 21, the judge observed, because the agreement was not printed and sent to him until February 27. Russell's lawyer returned the signed document to defendants' counsel on March 19, 2014, and that must be deemed the date of execution, the district judge held. Events of March 13 therefore are covered by the release, the court concluded... AFFIRMED

Gregory Jones v. Kim Butler No. 15-2850

Submitted September 7, 2016 — Decided September 19, 2016

Case Type: Prisoner

Southern District of Illinois. No. 14-CV-846-NJR-DGW — **Nancy J. Rosenstengel**, *Judge*.
Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; FRANK H.
EASTERBROOK, *Circuit Judge*.

ORDER

Gregory Jones, an Illinois inmate serving a life sentence, brought this suit under 42 U.S.C. § 1983 after his strategy to obtain reassignment to a favored prison backfired. Jones instead ended up at a facility where, he says, he was at risk of physical injury, prompting this litigation. Jones had been housed in protective custody at Pontiac Correctional Center until early 2014. But he wanted to return to his previous assignment at Stateville Correctional Center because, in his view, the medical care at that prison is better. According to Jones, he was told by administrators at Pontiac that transfers are not given to inmates in protective custody, so, in his words, he “signed himself out” of protective custody and returned to the general population. After that he was reassigned to a different prison, though not Stateville. Jones was sent instead to Menard Correctional Center, where, he alleges, he had earned the ire of guards by testifying against two of them in 2009 during unsuccessful lawsuits. Jones brought this action less than four months after returning to Menard, asking the district court, “1st and foremost,” to order that he be transferred permanently out of Menard... We can affirm the dismissal nonetheless because Jones’s complaint fails to state a claim against these defendants, no matter the relief requested. Recall that Jones alleged that the warden and other named defendants had failed to protect him from *threats* of violence at the hands of both inmates and vengeful guards. But Jones was moved to protective custody (and, shortly after that, back to Pontiac) without suffering an assault by other inmates. And neither did the guards who, years earlier, had threatened retaliation if Jones returned to Menard ever follow through. Absent cognizable harm, Jones does not have a claim for damages, for “it is the reasonably preventable assault itself, rather than any fear of assault, that gives rise to a compensable claim under the Eighth Amendment.” *Babcock v. White*, 102 F.3d 267, 272 (7th Cir. 1996). Moreover, even if we take a generous view of what Jones now calls his “battery claim”—that, on one occasion, tactical team officers kicked and slapped him—he never tried to bring a claim of excessive force against the perpetrators, and the named defendants cannot be held liable for not protecting him from that incident. Jones’s vague statements that he felt unsafe at Menard because *all* of the guards there were out to get him because of a years-old grudge was inadequate to alert the warden or DOC officials that he faced a credible, excessive risk of serious harm. See *Brown v. Budz*, 398 F.3d 904, 909–12 (7th Cir. 2005); *Dale v. Poston*, 548 F.3d 563, 569 (7th Cir. 2008). AFFIRMED.

Stacy Ernst v. City of Chicago Nos. 14-3783 & 15-2030

Argued February 25, 2016 — Decided September 19, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:08-cv-04370 — **Charles R. Norgle**, *Judge*.
Before BAUER, MANION and KANNE, *Circuit Judges*.

MANION, *Circuit Judge*. After Stacy Ernst and four other women applied unsuccessfully to work as Chicago paramedics, they brought this Title VII gender-discrimination lawsuit against the City of Chicago. These women were experienced paramedics from public and private providers of emergency medical services; they sought employment as paramedics with the Chicago Fire Department, but they did not apply to firefighting positions. All five women were denied jobs because they failed Chicago’s physical-skills entrance exam. In district court, this Title VII case was split into two parts. The plaintiffs’ disparate-treatment claims went to a jury trial, in which the district court provided an erroneous jury instruction. Their disparate-impact claims were tried in a separate bench trial. This second group of claims turned largely on whether Chicago’s test was based on a statistically validated study of job-related skills. We remand for a new jury trial on the disparate-treatment claims, reverse the bench trial’s verdict on disparate impact because the physical-skills study was neither reliable nor validated under federal law, and affirm the evidentiary rulings below.

Kevin Williams v. Sharon Hansen No. 15-2236

Submitted August 18, 2016 — Decided September 20, 2016

Case Type: Prisoner

Central District of Illinois. No. 13 C 1187 — **Michael M. Mihm**, *Judge*.

Before POSNER, EASTERBROOK, and SYKES, *Circuit Judges*.

POSNER, *Circuit Judge*. The plaintiff, Kevin Williams, who is serving a 65-year prison sentence for murder and for concealing the murder and is incarcerated at Pontiac Correctional Center, an Illinois maximum-security state prison, ordered a death certificate from the county clerk's office—the death certificate of the woman, Traci Todd, whom he'd murdered. Members of the prison's staff confiscated the certificate (which had arrived at the prison accompanied by an unsigned note that read: "There is a place in hell waiting for you [i.e., Williams] as you must know you will reap what you have sowed!" (the accompanying note was also confiscated, although there is no indication that Williams wants it). The reason given for confiscating the certificate was that "Williams could not have the death certificate because it posed a threat to the safety and security of the institution and would negatively impact Inmate Williams' rehabilitation." The confiscation precipitated this suit by Williams under 42 U.S.C. § 1983 against the staff members involved in the confiscation, as well as against the prison warden at the time and the director of the state prison system. Williams contends that by confiscating the certificate without even giving him a chance to read it, the defendants had infringed the First Amendment. The judge dismissed some of the defendants at the outset of the case; their dismissal was justified because they hadn't been involved in the decision to confiscate the certificate. Summary judgment for defendant Hansen was justified on the same ground. The judge granted summary judgment for the other defendants on a different ground: that their confiscating the certificate had decreased the risk that inmates would retaliate against "boasting inmates" like Williams, and also had protected Todd's family because the death certificate might include information identifying members of the family... The judgment of the district court is affirmed with regard to the dismissal of the defendants not involved in the confiscation of the death certificate, but is otherwise reversed and the case remanded for further proceedings consistent with this opinion.

Gregory Bowes v. Indiana Secretary of State No. 16-2350

Argued September 8, 2016 — Decided September 21, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:14-cv-01322-RLY-DML — **Richard L. Young**, *Chief Judge*.

Before FLAUM, ROVNER, and SYKES, *Circuit Judges*.

FLAUM, *Circuit Judge*. Plaintiffs Gregory P. Bowes and Christopher K. Starkey lost in the May 2014 Democratic primary election for Marion County Superior Court judges. A few months later, and just before the general election, the district court for the Southern District of Indiana held that the statute establishing the system for the election of such judges, Indiana Code § 33-33-49-13, was unconstitutional. That decision was affirmed by this Court. Plaintiffs then sought a special election, which they argued was the only way to vindicate their constitutional rights. The district court held that a special election was not appropriate and granted defendants' motion for summary judgment. For the reasons that follow, we agree and affirm.

USA v. Robert Kolbusz No. 15-2962

Argued September 20, 2016 — Decided September 21, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 12 CR 782 — **John Z. Lee**, *Judge*.

Before BAUER, POSNER, and EASTERBROOK, *Circuit Judge*.

EASTERBROOK, *Circuit Judge*. A jury convicted Robert Kolbusz of six counts of mail or wire fraud, see 18 U.S.C. §§ 1341, 1343, and he was sentenced to 84 months' imprisonment (the same term on each count to run concurrently) plus about \$3.8 million in restitution. Kolbusz, a dermatologist, submitted thousands of claims to the Medicare system and private insurers for the treatment of actinic keratosis, a skin condition that sometimes leads to cancer. He received many millions of dollars in payments. The evidence at trial permitted a reasonable jury to conclude that many if not substantially all of these claims could not have reflected an honest medical judgment—and that the treatment Kolbusz claimed to have supplied may have failed to help any patient who actually had actinic keratosis. We need not recount the evidence. Kolbusz put on a vigorous defense, but the record permitted the jury to find that he committed the crimes as charged... AFFIRMED

Kurt Stovall v. Daniel Grohen No. 16-2245

Submitted September 22, 2016 — Decided September 22, 2016

Case Type: Civil

Northern District of Illinois, Western Division. No. 15 C 50223 — **Philip G. Reinhard**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Kurt Stovall sued three employees of the Illinois Department of Human Services Division of Rehabilitation Services, alleging that they discriminated against him based on his age, race, and disability and otherwise retaliated against him when they denied payment for his previously approved paralegal courses and bus transportation. Stovall also asked the district court to recruit counsel. After allowing Stovall to amend his complaint three times, the district court screened the complaint, see 28 U.S.C. § 1915(e)(2), and dismissed it for failure to state a claim. The court concluded that Stovall's allegations did not support a claim of discrimination or raise a plausible claim that the department retaliated against him for any protected speech. The court also denied Stovall's motion to recruit counsel because the facts that he alleged "do not amount to a cognizable claim for relief" and "representation by counsel would be of no assistance."... AFFIRMED.

Terrance Hollowell v. Chase Home Finance No. 16-1822

Submitted September 22, 2016 — Decided September 22, 2016

Case Type: Bankruptcy from District Court

Northern District of Indiana, South Bend Division. No. 3:16cv134 — **Philip P. Simon**, *Chief Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Terrance Hollowell appeals the district court's dismissal of his untimely appeal from a bankruptcy court's order. We affirm.

Valiant Green v. David Beth No. 16-1714

Submitted September 22, 2016 — Decided September 22, 2016

Case Type: Prisoner

Western District of Wisconsin. No. 15-cv-540-bbc — **Barbara B. Crabb**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

In this suit under 42 U.S.C. § 1983 Valiant Green, a pre-trial detainee, contends that Wisconsin jail staff violated the Fourteenth Amendment in two ways. First he alleges that the jail staff ignored the danger that the jail's contaminated food poses to detainees. Second he asserts that jail staff delayed treating his injury from that food. The district court screened the complaint, *see* 28 U.S.C. § 1915(e)(2)(B)(ii), concluded that it did not validly state a claim, and dismissed it with prejudice. We review this dismissal *de novo* and apply the standard for Rule 12(b)(6) dismissals, which is to take all well-pleaded allegations as true and construe them favorably to the plaintiff. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). Viewed this way, we conclude that Green has adequately pleaded his two Fourteenth Amendment claims, so we vacate the judgment and remand.

USA v. Marvin Miller No. 16-1447

Submitted September 22, 2016 — Decided September 22, 2016

Case Type: civil

Northern District of Indiana, South Bend Division. No. 3:14-cv-01696 — **Robert L. Miller, Jr.**, Judge.

Before MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Marvin Miller, a serial tax protester, appeals the grant of summary judgment for the government in its action to collect unpaid taxes, *see* 26 U.S.C. §§ 7401–03. We affirm.

Vickie Bell v. Board of Education of Proviso Township No. 16-1365

Submitted September 22, 2016 — Decided September 22, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 8090 — **Harry D. Leinenweber**, Judge.

Before MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Vickie Bell began experiencing pain in her back and knees while working at a high school, and the school district allowed her to stay home until she could work again. When months later she failed to tell the school district whether she wanted to return to work, it fired her for abandoning her job. She has sued for disability discrimination, failure to accommodate her disability, and retaliation under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 to 12213. The district court granted summary judgment for the defendant. Because the school district fired Bell based on its belief that she had abandoned her job, it did not violate the ADA, so we affirm.

Ronald Perrault v. Wisconsin Department of Corrections No. 16-1189

Submitted September 22, 2016 — Decided September 22, 2016

Case Type: Prisoner

Western District of Wisconsin. No. 15-cv-144-bcc — **Barbara B. Crabb**, Judge.

Before MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Ronald Perrault, a Wisconsin prisoner, appeals from the dismissal of his complaint alleging that employees of the state courts and the Department of Corrections should be liable under 42 U.S.C. § 1983 for overlooking a sentencing mistake that caused him to serve several months in prison after his

sentence should have expired. The district court concluded that Perrault's allegations fail to state a claim. We agree with that conclusion and affirm the dismissal.

USA v. Derrick Corn No. 15-3850

Submitted September 22, 2016 — Decided September 22, 2016

Case Type: Criminal

Eastern District of Wisconsin. No. 15-CR-58 — **William C. Griesbach**, *Chief Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Derrick Corn, a Menominee Indian, called the tribal police and reported that his 6-month-old daughter was not breathing normally. Officers found the child unresponsive and having seizures. The child was rushed to the hospital and diagnosed with multiple skull fractures caused by intentional, severe trauma. A grand jury charged Corn with committing an assault on a reservation causing "serious" bodily injury, which carries a maximum penalty of 10 years' imprisonment. 18 U.S.C. §§ 1153, 113(a)(6). As part of a plea agreement, however, the government dismissed that charge and instead allowed Corn to plead guilty to an information alleging that his assault on the reservation caused "substantial" bodily injury to a child, a change that reduced the maximum penalty to 5 years. *Id.* §§ 1153, 113(a)(7). Corn agreed not to challenge his sentence on appeal except for claims asserting (1) punishment in excess of a statutory maximum; (2) the district court's reliance at sentencing on a constitutionally impermissible factor; or (3) ineffective assistance of counsel. Corn was sentenced to 5 years' imprisonment to be followed by 3 years' supervised release... Finally, counsel tells us that Corn has suggested "that his trial attorney was ineffective with respect to investigating his case and presenting evidence to contradict the government's evidence." But counsel properly recognizes that claims of ineffective assistance are best raised in a collateral proceeding where an evidentiary foundation can be developed. *See Massaro v. United States*, 538 U.S. 500, 504–05 (2003); *United States v. Flores*, 739 F.3d 337, 340–41 (7th Cir. 2014). Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

United States Soccer Federation v. United States National Soccer No. 15-3402

Argued March 31, 2016 — Decided September 22, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 9899 — **Virginia M. Kendall**, *Judge*.

Before MANION and KANNE, *Circuit Judges* and PEPPER, *District Judge*.

KANNE, *Circuit Judge*. Soccer is called "the beautiful game," but the collective-bargaining process behind the sport can be ugly. This case matches Plaintiff United States Soccer Federation, Inc. ("US Soccer Federation"), the national governing body for soccer in the United States, against Defendant United States National Soccer Team Players Association ("Players Association"), the labor union for members of the Men's National Team, in a dispute over their current collective bargaining agreement ("CBA") and uniform player agreement ("UPA" and collectively with CBA, "CBA/UPA"). The present case kicked off in 2013, when the Players Association disapproved the US Soccer Federation's proposed tequila poster advertisement, which contained player images. Counterattacking, the US Soccer Federation issued a notice, declaring that the CBA/UPA does not require Players Association approval for use of player likenesses for six or more players in print creative advertisements by sponsors, based on the express terms of the agreement. Crying foul, the Players Association filed a grievance and demanded arbitration, arguing that the CBA/UPA does require this, based on the past practice of the parties. The arbitrator issued an award in favor of the Players Association. The district court confirmed the arbitrator's award and granted summary judgment for the Players Association. The US Soccer Federation appealed. We reverse.

Jose Arce v. Jennifer Barnes No. 15-3276

Submitted September 22, 2016 — Decided September 22, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:13-cv-01777-WTL-MJD — **William T. Lawrence, Judge.**

Before MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Jose Arce, a former Indiana inmate who suffers from back pain, appeals the grant of summary judgment against him in this suit under 42 U.S.C. § 1983, asserting an Eighth Amendment claim of deliberate indifference, a First Amendment retaliation claim, and a state-law negligence claim. We affirm.

Theresa Dukes v. Eric Cox No. 15-2783

Submitted September 22, 2016 — Decided September 22, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:09-cv-1440-JMS-DML — **Jane E. Magnus-Stinson, Judge.**

Before MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Theresa Dukes claims that in 2007 three law enforcement officers entered her home without a warrant and beat her, in violation of the Fourth Amendment and Indiana tort law. See 42 U.S.C. § 1983. She filed this action in 2009 but impeded its progress for more than five years, prompting the district court finally to dismiss the case with prejudice for failing to prosecute and disobeying court orders. We affirm the dismissal.

Landmark American Insurance Co. v. Peter Hilger No. 15-2566

Argued February 10, 2016 — Decided September 22, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 02552 — **Edmond E. Chang, Judge.**

Before BAUER, FLAUM, and SYKES, *Circuit Judges*.

SYKES, *Circuit Judge*. Peter Hilger faces two separate lawsuits alleging that he and several codefendants persuaded credit unions in Michigan and Tennessee to fund loans by overstating the value of the life-insurance policies that would serve as collateral. Hilger tendered his defense to Landmark American Insurance Company under a professional liability policy held by one of his codefendants, O'M and Associates LLC ("O'MA"). Although Hilger is not a named insured under O'MA's policy, the policy defines "covered persons and entities" to include O'MA's independent contractors; Hilger sought coverage as such... Illinois law permits Landmark to offer evidence outside the Michigan and Tennessee complaints that Hilger isn't covered as an independent contractor under O'MA's policy. We therefore REVERSE the judgment in favor of Hilger and REMAND for further proceedings.

James Melton v. Tippecanoe County, Indiana No. 14-3599

Argued March 31, 2016 — Decided September 22, 2016

Case Type: Civil

Northern District of Indiana, Hammond Division at Lafayette. No. 4:11-CV-46 — **Theresa L. Springmann**, Judge.
Before MANION and KANNE, *Circuit Judges*, and PEPPER, *District Judge*.

KANNE, *Circuit Judge*. After he disregarded an order from his supervisor that he could not change his schedule to make up for missed time, Plaintiff James Melton was discharged from his job at the Tippecanoe County Surveyor's Office. Melton later filed suit against the County, alleging that during his time there, he had arrived early and worked through lunch every day and was not compensated for overtime in violation of the Fair Labor Standards Act. The district court granted summary judgment to the County because Melton had not designated sufficient evidence to find that he worked more than forty hours in a workweek. We affirm.

O. B. v. Felicia Norwood No. 16-2049

Argued September 7, 2016 — Decided September 23, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 C 10463 — **Charles P. Kocoras**, *Judge*.
Before WOOD, *Chief Judge*, and POSNER and EASTERBROOK, *Circuit Judges*.
EASTERBROOK, *Circuit Judge*, concurring.

POSNER, *Circuit Judge*. This appeal by the Illinois Department of Healthcare and Family Services ("HFS") (Norwood, the nominal defendant-appellant, is sued only in her official capacity as the department's director) challenges Judge Kocoras's grant of a preliminary injunction. The appeal requires us to interpret provisions of the Medicaid Act, with which Illinois as a participant in Medicaid is required to comply; HFS is the agency charged with carrying out the state's duty of compliance. The Act defines "medical assistance" as including "early and periodic screening, diagnostic, and treatment services [EPSDT] ... for individuals ... under the age of 21" (to simplify we'll refer to all such persons as "children"), 42 U.S.C. § 1396d(a)(4)(B), and requires the state to "mak[e] medical assistance available" to all eligible individuals. § 1396a(a)(10)(A). A related provision, § 1396a(a)(43)(C), requires the state to "provide for ... arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services." (Corrective "treatment" is "T" in the acronym "EPSDT.") Another provision, 42 U.S.C. § 1396a(a)(8), requires that medical assistance "shall be furnished with reasonable promptness to all eligible individuals." ... The district judge's grant of the preliminary injunction is AFFIRMED.

Joseph Reinwand v. Frank Blackburn No. 16-1525

Submitted September 22, 2016 — Decided September 23, 2016

Case Type: Prisoner

Western District of Wisconsin. No. 15-cv-799-bcc — **Barbara B. Crabb**, *Judge*.
Before MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Joseph Reinwand, a Wisconsin prisoner, appeals the dismissal of his complaint alleging that Dr. Frank Blackburn, a reviewing physician for a disability benefit fund, committed medical malpractice by opining that Reinwand is not totally disabled. The district court dismissed the complaint for failure to state a claim. We modify the judgment to reflect a dismissal for lack of jurisdiction rather than on the merits, and as modified we affirm.

USA v. Talon Wright No. 15-3109

Argued April 18, 2016 — Decided September 23, 2016

Case Type: Criminal

Central District of Illinois. No. 14-cr-69 — **Colin S. Bruce**, *Judge*.

Before EASTERBROOK and SYKES, *Circuit Judges*, and ADELMAN, *District Judge*.

SYKES, *Circuit Judge*. A day after police responded to a domestic dispute between Talon Wright and Leslie Hamilton, an investigator returned to the couple's apartment to follow up on suspicions that Wright was in possession of child pornography. With Hamilton's consent, the investigator searched the apartment and conducted a forensic pre-view of a desktop computer found in the living room. The preview revealed images of child pornography on the hard drive. Wright was indicted on child-pornography and child-exploitation charges. He moved to suppress the evidence recovered from the warrantless search of his computer, arguing that Hamilton lacked authority to consent. The district judge denied the motion. Wright pleaded guilty but reserved his right to appeal the denial of suppression and now does so. We affirm. Although Wright owned the desktop computer, Hamilton was a joint user who enjoyed virtually unlimited access to and control over it. The computer was located in the living room of the couple's apartment, and everyone in the family, including Hamilton and her children, used it freely. These facts, which were conveyed to the investigator prior to the search and later confirmed through further investigation, establish Hamilton's common authority over the computer.

Vince Davis, Sr. v. City of Chicago Police Department No. 15-1341

Submitted September 22, 2016 — Decided September 23, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13-cv-08149 — **Charles P. Kocoras**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*.

ORDER

Vince Davis, a former Chicago police officer, seeks to regain the job he lost in 1990. Davis brought this suit under 42 U.S.C. § 1983 principally claiming that the City of Chicago and a number of its employees used a falsified drug test to get him fired in retaliation for testifying against a police commander's son accused of robbery. Davis appended to his complaint hundreds of pages documenting his investigation into the company that tested his urine and his attempts throughout the 1990s to prove his innocence. In a series of oral rulings, the district court dismissed the complaint as untimely and Davis appeals...

AFFIRMED.

Sammy Moore v. Peter Liszewski No. 14-3244

Submitted July 25, 2016 — Decided September 23, 2016

Case Type: Prisoner

Southern District of Illinois. No. 11-cv-1148 — **Stephen C. Williams**, *Magistrate Judge*.

Before BAUER, POSNER, and FLAUM, *Circuit Judges*.

POSNER, *Circuit Judge*. The plaintiff, an Illinois state prison inmate, brought this federal constitutional suit against a correctional officer (and other prison employees, but they unquestionably were properly dismissed by the district court) with whom he had had an altercation almost a decade ago. He claimed that the officer, Peter Liszewski, had used excessive force against him. Following our remand from the initial dismissal of his suit, see *Moore v. Mahone*, 652 F.3d 722 (7th Cir. 2011), the case was tried to a jury. The jury's verdict determined that Liszewski had indeed used excessive force against the plaintiff, but awarded Moore only nominal damages—\$1—on the ground (one of the options given the jury in the judge's instructions) that the excessive force had not caused injury to the plaintiff and thus he had no entitlement to compensatory damages—there was nothing to compensate him for... The plaintiff in our case of course wants more than just nominal damages. He argues that he was injured by Liszewski—that in the altercation Liszewski had struck him on the head twice with

Liszewski's walkie-talkie. But there was contrary evidence as well, evidence that the injury was attributable to the plaintiff's having fallen and hit his head on a table, an accident not caused by Liszewski. The jury evidently agreed with that evidence, as it was entitled to do. There were a number of witnesses, both prison inmates and prison staff, to the altercation, and the cause of the injury could not be definitively determined. This allowed the jury to side with Liszewski to the extent of ruling that Moore had incurred no actual damages but entitling him to nominal damages and whatever increments, such as court costs and attorneys' fees, to which an award of nominal damages entitles the plaintiff. The judge awarded those costs and fees directly to the lawyer whom the judge had recruited for Moore, and that was proper because Moore had incurred neither expense. The judgment of the district court is therefore AFFIRMED.

Wayne D. Kubsch v. Ron Neal No. 14-1898

Argued February 9, 2016 — Decided September 23, 2016

Case Type: Prisoner

Northern District of Indiana, South Bend Division No. 3:11-cv-42-PPS — **Philip P. Simon**, *Chief Judge*. Before WOOD, *Chief Judge*, and POSNER, FLAUM, EASTERBROOK, KANNE, ROVNER, WILLIAMS, SYKES, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*, joined by EASTERBROOK and SYKES, *Circuit Judges*, dissenting.

WOOD, *Chief Judge*. On September 18, 1998, someone murdered three people in Mishawaka, Indiana: Beth Kubsch, Rick Milewski, and his son Aaron Milewski. Beth's husband, Wayne Kubsch, was accused and convicted of the triple murders and sentenced to death. After direct appeals and post-conviction proceedings in Indiana's state courts, Kubsch turned to the federal court for habeas corpus relief under 28 U.S.C. § 2254. Although he raised a number of arguments in support of his petition, by now they have been distilled into one overarching question: did the state courts render a decision contrary to, or unreasonably applying, the U.S. Supreme Court's decision in *Chambers v. Mississippi*, 410 U.S. 284 (1973)? The stakes could not be higher: because the state courts found *Chambers* inapplicable, the jury never heard evidence that, if believed, would have shown that Kubsch could not have committed the crimes. The district court and a panel of this court concluded that the state court decisions passed muster under the deferential standards imposed by the Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA). See *Kubsch v. Neal (Kubsch IV)*, 800 F.3d 783 (7th Cir. 2015). That opinion was vacated when the full court decided to hear the case en banc. We now reverse and remand for issuance of the writ.

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](#).