

MSA 2022 Jail Administrator's Conference

Legal Update

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United States Supreme Court

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Brown v. Polk County, Wisconsin

- This is not an opinion issued by the Supreme Court. It is a memorandum filed by Justice Sotomayor.
 - Opinion – Ruling of the Court
 - Memorandum – A statement of a justice, usually in response to the Court denying a writ of certiorari.
- Sotomayor agrees with the Court's decision to not hear this case.
 - "This petition raises an important question. Nonetheless, I agree with the Court's decision to deny certiorari as further consideration of the substantive and procedural ramifications of the problem by other courts will enable us to deal with the issue more wisely at a later date."

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Brown v. Polk County, Wisconsin

- In May of 2017, police arrested Brown for shoplifting and took her to the Polk County Jail.
- The jail's written policy at the time permitted jail officials to direct medical personnel to perform "an inspection and penetration of the anal or vaginal cavity...by means of an instrument, apparatus, or object, or in any other manner."
- The standard used by the jail to initiate a body cavity search was reasonable grounds to believe a detainee was concealing weapons, contraband or evidence. Staff could also initiate a body cavity search if they believed the safety and security of the jail would benefit from the search.

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Brown v. Polk County, Wisconsin

- At least one employee (Hilleshiem) would seek permission for body cavity searches anytime one inmate reported that another inmate had contraband in a body cavity.
 - Hilleshiem typically did not investigate the informant's source, determine the informant's reputation for honesty or seek any other indicia of reliability.
 - According to the transcript, in his view "the tip alone provided reasonable grounds."
 - The transcript also stated that the jail administrator (Revels) only relied on Hilleshiem's word to approve a search.

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Brown v. Polk County, Wisconsin

- One day after Brown was arrested, two inmates told jail staff that Brown was hiding drugs in her body.
- Hilleshiem contacted the jail administrator, who in turn authorized the search.
- Brown was taken to a hospital where a male doctor performed an ultrasound which did not show any foreign objects.
- The doctor then inserted a speculum into Brown's vagina and anus a conducted visual inspections and did not locate any contraband.

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Brown v. Polk County, Wisconsin

- Brown testified that she immediately started crying after the exam, cried the entire time en route back to the jail and asked to be placed in a holding cell because she couldn't quit crying.
- Brown stated that the trauma of the exam left her with anxiety and depression. She stated that she only slept three hours a night and that she experienced flashbacks. Brown also stated that after she was released from jail, she feared leaving her house and was terrified the police would pull her over and send her back to jail.

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Brown v. Polk County, Wisconsin

- Two years after the exam Brown stated that she was still afraid to be in a room alone with a man, including members of her family.
- Brown filed suit against Polk County, Hilleshiem, Revels and others alleging violations of her Fourth Amendment right to be free from unreasonable searches.
- The District Court granted the defendants' motion for summary judgment concluding that a penetrative cavity search of a pretrial detainee only required reasonable suspicion.
- The 7th Circuit affirmed and stated, "Given the heft of security interests at stake...the invasion of privacy was not so...great that it pushes the threshold suspicion requirement into probable cause."

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Brown v. Polk County, Wisconsin

- In her memorandum, Justice Sotomayor states that it was error for the 7th Circuit not to give consideration to whether something less intrusive was sufficient to ensure jail security.
- Justice Sotomayor cited previous US Supreme Court rulings (in other search contexts) which outlined that searches "must be judged in the light of the availability of less invasive alternatives" and that when such alternatives exist that the State must "offer a satisfactory justification for demanding the more intrusive alternative."

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Brown v. Polk County, Wisconsin

- Justice Sotomayor also pointed out that two other sitting justices (Alito and Roberts) have previously highlighted the importance of considering less intrusive alternatives in the context of searching pretrial detainees in the concurring opinion in *Florence v. Board of Chosen Freeholders of County of Burlington* (2012).
- Justice Sotomayor listed a number of possible alternatives to the body cavity search and stated that "going forward...courts must consider less intrusive possibilities before categorically allowing warrantless searches."

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Missouri's Strip and BCS Law

- RSMo 544.193 contains prohibitions and procedures related to strip searches and body cavity searches.
 - Does not apply to people committed to a facility by judgment of a court (aka convictions) — RSMo. 544.197
- It is important to note that the Missouri law on this subject is more restrictive than the current federal caselaw.
- Missouri law prohibits the strip searching or body cavity searches on person's arrested or detained for traffic offense or misdemeanors unless there is probable cause to believe that the person is concealing a weapon, evidence of a crime or contraband.

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Missouri's Strip and BCS Law

- Missouri law also states that body cavity searches on individuals arrested or denied for non-felony offenses may only be conducted pursuant to a search warrant.
 - They must be performed under sanitary conditions.
 - They must be performed by a physician, registered nurse, or practical nurse who is licensed to practice in the State of Missouri.
- RSMo. 544.193 also contains procedures law enforcement must follow in strip search and body cavity search situations.
 - Obtain written permission for the person in command of the agency
 - Must prepare a report regarding the search which has to include the permission obtained, the name of the person searched, the name of who performed the search and the time, date and place of the search.

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What Does the Future Hold?

- It is possible that this is a sign of things to come.
 - Remember, Justice Sotomayor agreed with the denial to hear this case, but she believes there will be cases that will allow the Court to address the issue at a later date.
 - We've had recent Supreme Court cases in other search contexts which have tightened up search justifications and the scope of searches.
 - Courts have paid increased attention to pretrial detainee rights over the last several years.
 - Three justices have made comments about less intrusive alternatives.
- Even with Missouri's higher standards an opinion regarding less intrusive alternatives may impact when these searches are available.
 - Practice Pointer: Use the least intrusive means of searching to achieve the objective. (Do you want to be the test case?)

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Mattingly v. Duval County Jail

- This is a law suit over medical care alleging deliberate indifference.
- This is another case that the US Supreme Court declined to hear.
- The 11th Circuit's opinion in this case is only two paragraphs long.
- The handling of this case by the appellate courts is instructive on a particular point in this area of law.
 - In the underlying case the federal court is exercising supplemental jurisdiction.
 - The lawsuit was filed with both federal claims (violations of civil rights) and state law claims.
 - The court has subject matter jurisdiction over federal civil rights claims and also has jurisdiction to hear the state law claims because they are intertwined with the federal claims.

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Mattingly v. Duval County Jail

- Mattingly was a pretrial detainee at the Duval County Jail.
- On May 9th, 2013, Mattingly slipped and fell and suffered a lisfranc injury (injury to the mid-foot involving bone and/or ligaments and cartilage).
- Mattingly was seen by doctors at a local hospital who recommended numerous treatments with a specific physician
 - Pain management, physical therapy, surgery, nerve blocks, etc.
- The jail's doctor (Barnes) refused to allow Mattingly to receive any of the treatment recommended by the hospital and considered the recommended treatments as elective and stated that the Sheriff's Office wouldn't pay for the treatments.

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Mattingly v. Duval County Jail

- It was alleged that Barnes also "refused to administer narcotic pain medications from the onset of the injury until the Plaintiff's leg was amputated and it was no longer needed."
- In April of 2014, a Physician Assistant at the jail, (Khan), took crutches to Mattingly and allegedly told him to "crawl his ass back to his dorm" and threatened to taze Mattingly if he didn't comply.
- Mattingly also alleged that Khan refused to issue prescribed medications received from the hospital and told nurses to avoid speaking with Mattingly.

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Mattingly v. Duval County Jail

- A Nurse Practitioner at jail (Richo) allegedly refused to issue prescribed medication from the hospital and told Mattingly that she would not refer him for a specialty consultation.
- Mattingly claimed that he suffered from a secondary condition, Reflex Sympathy Dystrophy, from the Defendants' neglect and deliberate indifference to his Lisfranc Injury and alleged that his leg was amputated as a result of the Defendants' actions and inactions.
- Mattingly also alleged that his medical records were inaccurate but presented no evidence of fabrication.

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Mattingly v. Duval County Jail

- The majority of the District Court's opinion recites sections of testimony from the defendants and medical records which showed that Mattingly was seen by jail medical staff numerous times, that Mattingly was seen at the hospital over a dozen times and that Mattingly was eventually referred to specialists by the jail medical staff.
- The District Court found that Mattingly had received consistent and **adequate** medical evaluation and treatment. The Court noted that the Plaintiff's allegations did not take the whole picture of his treatment into account and that his complaints about specific instances of alleged inadequacies did not amount to a constitutional violation.

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Mattingly v. Duval County Jail

- "The Constitution does not require that Plaintiff be afforded the exact type of medical care and treatment he requests. On the contrary, he is only entitled to minimally adequate medical care."
- "Although he may personally believe that he should have been treated differently, his personal disagreement with the treatment administered by the defendants is a classic example of a matter of medical judgment—not a constitutional violation."
- It should be noted that even when medical care is ultimately provided, jail officials may still be found to have acted with deliberate indifference by delaying the treatment of serious medical needs even for a period of hours.

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Mattingly v. Duval County Jail

- The reason for the delay and the nature of the medical need are relevant in determining if the delay was a violation of the Constitution.
- The District Court also made findings regarding Mattingly's recent history of drug abuse and the manner in which he cared for his injury in evaluating the treatment that he received.
- As previously mentioned the 11th Circuits analysis of this case is two paragraphs long (and the first paragraph is background material).

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Mattingly v. Duval County Jail

- The 11th Circuit held that Mattingly's reference to particular instances of the defendants' alleged failures to provide him with adequate care did not rise to the level of a constitutional violation.
- "As the district court pointed out, the defendants were responsive to Mr. Mattingly's complaints, and he was treated at more than one hospital. That the defendant did not provide Mr. Mattingly with his desired course of treatment, or comply with the recommendations of outside medical professionals is insufficient to create an issue of fact on a deliberate indifference claim.

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Mattingly v. Duval County Jail

- "A simple difference in medical opinion between the prison's medical staff and the inmate as to the latter's diagnosis or course of treatment does not support a claim of deliberate indifference."
- Things to remember:
 - There is a difference between medical malpractice and deliberate indifference.
 - Malpractice is a negligence based tort. Under the 14th Amendment (pretrial detainees) and the 8th Amendment (convicts), deliberate indifference is more akin to gross recklessness.
 - This is really not a case about no liability for the conduct. There is no liability because of how the Plaintiff plead the case. It is unknown if there would have been a different outcome if he had also plead a state law negligence claim for medical malpractice.

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Lombardo v. City of St. Louis, Missouri

- In December of 2015, St. Louis police officers arrested Gilbert for trespassing in a condemned building and failing to appear in court for a traffic citation.
- Gilbert was taken to the St. Louis Police Department's central station and placed in a holding cell.
- While Gilbert was in the cell, an officer observed Gilbert tie a piece of clothing around the bars of the cell and put it around his neck in an attempt to hang himself.

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Lombardo v. City of St. Louis

- Three officers responded and entered the cell. One grabbed Gilbert's wrist to handcuff him but Gilbert evaded the officer and began to struggle.
- Gilbert was brought down to a kneeling position over a concrete bench and handcuffed behind his back. Gilbert reared back, kicked the officers and hit his head on the bench.
- After Gilbert kicked an officer in the groin more officers responded with leg shackles and while Gilbert continued to struggle his legs were placed in the shackles.

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Lombardo v. City of St. Louis

- Emergency medical personnel and several more officers responded. Gilbert was moved to a prone position, face down on the floor. Three officers held Gilbert's shoulders, biceps and legs and one officer placed pressure on Gilbert's back and torso.
- Gilbert tried to raise his chest and stated, "It hurts. Stop." After 15 minutes Gilbert's breathing became abnormal, and he stopped moving. CPR was started after it was determined he did not have a pulse. An ambulance took Gilbert to a hospital, where he was pronounced dead.

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Lombardo v. City of St. Louis

- Gilbert's parents sued alleging that the officers had used excessive force against Gilbert in violation of the Fourth and Fourteenth Amendments. The District Court granted summary judgment for the officers holding that the officers had not violated clearly established law.
- The Eighth Circuit affirmed on different grounds, holding that the officers did not apply unconstitutionally excessive force against Gilbert.

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Lombardo v. City of St. Louis

- SCOTUS began its analysis by noting that they did not need to decide whether the Fourth or the Fourteenth Amendment provided the proper basis for a claim of excessive force against a pretrial detainee.
 - "Whatever the source of law, in analyzing an excessive force claim, a court must determine whether the force was objectively unreasonable in light of the facts and circumstances of each particular case."
- The Court also noted that the standard cannot be applied mechanically and that it required careful attention to the facts and circumstances of the case.

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Lombardo v. City of St. Louis

- The Court cited *Kingsley* and provided a list of circumstances to be considered:
 - The relationship between the need for the use of force and the amount of force used;
 - The extent of the Plaintiff's injury;
 - Any effort made by the officer(s) to temper or to limit the amount of force;
 - The severity of the security problem at issue;
 - The threat reasonably perceived by the officer(s); and
 - Whether the Plaintiff was actively resisting.

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Lombardo v. City of St. Louis

- SCOTUS pointed out that although the Eighth Circuit cited the *Kingsley* factors, it was unclear whether the Eighth Circuit thought that the use of a prone restraint – no matter the kind, intensity, duration or surrounding circumstances was per se constitutional as long as the individual appeared to be resisting officers.
- SCOTUS also noted that the Eighth Circuit described certain facts as "insignificant." SCOTUS thought that those facts (Gilbert was already handcuffed and shackled when he was put in the prone position) were potentially important under *Kingsley*.

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Lombardo v. City of St. Louis

- SCOTUS noted that, "[s]uch details could matter when deciding whether to grant summary judgment on an excessive force claim."
- The Court noted that the record showed that officers placed pressure on Gilbert's back even though St. Louis instructs its officers that pressing down on the back of a prone subject can cause suffocation.
 - The Court also noted that the record contained "well-known police guidance recommending that officers get a subject off his stomach as soon as he is handcuffed because of that risk" and that "the struggles of a prone suspect may be due to oxygen deficiency, rather than a desire to disobey officers' commands."

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Lombardo v. City of St. Louis

- The Court noted that when considered alongside the duration of the restraint and that Gilbert was handcuffed and shackled at the time, those facts may be pertinent to the *Kingsley* factors.
 - "Having either failed to analyze such evidence or characterized it as insignificant, the [Eighth Circuit's] opinion could be read to treat Gilbert's ongoing resistance as controlling as a matter of law. Such a per se rule would contravene careful, context-specific analysis required by this Court's excessive force precedent."
- The Court made a point to state that this is about how the Eighth Circuit analyzed the case and not a statement about the conduct of the officers.
 - "We express no view as to whether the officers used unconstitutionally excessive force or, if they did, whether Gilbert's right to be free of such force in these circumstances was clearly established at the time of his death."

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8th Circuit Court of Appeals

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Perry v. Adams

- This is an appeal by an employee of the St. Louis City Police Department after she was denied qualified immunity. The Plaintiff underlying suit is a Plaintiff Ad Litum.
- DeJuan Brison committed suicide by hanging himself in a cell at the City of Jennings Detention Center.
- Prior to be housed at the Jennings Detention Center, Brison was housed at the St. Louis City Justice Center.
- The St. Louis Justice Center had a policy entitled Crisis Watch Status, which required rigorous supervision of detainees who were determined to be a suicide risk.

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Perry v. Adams

- This heightened level of supervision was known as "Full Suicide Watch".
- The policy had a less restrictive watch status known as "Close Observation".
- Close Observation was used with detainees who were determined to be "acutely disturbed, but not suicidal or homicidal."
 - This determination is to be made by a "Qualified Mental Health Professional".

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Perry v. Adams

- St. Louis Detention Center policy also required officials who transferred a detainee to another facility or jurisdiction to notify the receiving authorities of any watch status and provide them with a copy of the detainee's Medical Screening Assessment Form.
- Brison had been on Full Suicide Watch while in the custody of the St. Louis Detention Center. A Qualified Mental Health Professional determined that Brison was non-suicidal and moved him to Close Observation status while he was still incarcerated at the St. Louis Detention Center.

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Perry v. Adams

- It was alleged that Adams did not notify Jennings officials of Brison's mental health status or watch status when she transferred him to the custody of the Jennings Detention Center.
 - In other words, the allegation is that Adams was deliberately indifferent to the substantial risk of suicide by failing to warn Jennings' personnel.
- The 8th Circuit noted to succeed on a deliberate indifference claim in this context a plaintiff must show:
 - 1) That Adams had actual knowledge that Brison was at a substantial risk of serious harm; and
 - 2) That Adams failed to take reasonable action in response to the known risk.

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Perry v. Adams

- The 8th Circuit noted that the issue in this case is not "whether Adams possessed knowledge that Brison was at some risk yet failed to act." The question is "whether on the facts presented Adams knew of a substantial risk of serious harm yet failed to act."
- For qualified immunity purposes, rights are not defined at a broad level of generality. For a right to be clearly established there must be "circuit precedent that involves sufficiently similar facts to squarely govern the conduct"... "or, in the absence of binding precedent, a robust consensus of cases of persuasive authority constituting settled law."

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Perry v. Adams

- The 8th Circuit framed the level of specificity mandated for the analysis as follows:
 - "Does a transferring officer violate a pretrial detainee's Fourteenth Amendment rights by failing to inform a receiving entity that a detainee is on a close-observation status if a mental health professional has determined that the detainee is not suicidal and if the applicable close-observation status is, in and of itself, indicative of the absence of a suicide risk?"
- The 8th Circuit found that the law on this point was not clearly established at the time of Adams' conduct.

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Perry v. Adams

- The 8th Circuit distinguished this case from the situation in *Boswell v. Sherburne County* (8th Cir. 1988).
 - In *Boswell*, a jailer with knowledge of a detainee's serious medical condition failed to contact medical professional or advise incoming jailers as to the detainee's risk.
- The 8th Circuit noted that short of a suicide risk, which a mental health professional found to be absent, the plaintiff did not identify what risk of serious harm Brison faced and what actual knowledge Adams possessed regarding that risk.

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Perry v. Adams

- The 8th Circuit did outline a duty of correctional officials.
 - "Of course, detention officers have a general duty to guard reasonably against known risk of suicide."
 - This duty was previously announced in *Coleman v. Parkman* (8th Cir. 2003).
 - "As such, transferring officers generally should strive to convey important information likely to aid in the protection of inmates' health and welfare."
- The 8th Circuit noted that clearly established and specific constitutional requirements defined under the general rule "do not support the proposition that an officer is required to second-guess a mental health professional's judgment as to the substantiality of a suicide risk."

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Perry v. Adams

- The 8th Circuit did address the point that the 7th Circuit had previously affirmed a denial of qualified immunity on allegations that a transferring officer failed to inform receiving authorities about a suicide risk.
- The 8th Circuit distinguished the 7th Circuit case because it did not involve a suggestion that a mental health professional had found the detainee to be non-suicidal.
- The 8th Circuit also said that a single case from a neighboring circuit did not serve as a "robust consensus of cases of persuasive authority constituting settled law."
- The 8th Circuit overturned the District Court's denial of qualified immunity for Adams.

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Manning v. Ryan

- Between October 2017, and August 2018, Manning was a pretrial detainee at the Muscatine County Jail in Iowa (MCJ).
- Manning had two children between the ages of 11 and 13.
- MCJ had a policy that pretrial detainees were prohibited from having visits with minor children.
- Due to the policy, Manning did not receive any visits with his children during his time at MCJ.
- Manning sued and alleged that the Sheriff of Muscatine County had violated his constitutional rights by denying him visitation with his children.

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Manning v. Ryan

- Officials are entitled to qualified immunity in lawsuits alleging civil rights violations unless that violated federal statutory or constitutional rights and the unlawfulness of the conduct was clearly established at the time of the conduct.
- The 8th Circuit noted that "Clearly established means that at the time of the challenged conduct, the contours of a right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right."
- The Court noted that a case directly on point is not required but existing precedent "must have placed the statutory or constitutional question beyond debate."

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Manning v. Ryan

- The 8th Circuit determined that qualified immunity was appropriate and that the case law in the 8th Circuit had not necessarily made it clear that enforcing a blanket prohibition on visitation with minor violated the Constitution.
- BUT...
- "The time is ripe, however, to clearly establish that such behavior may amount to a constitutional violation in the future."
- The 8th Circuit noted that in *Turner v. Safley*, the US Supreme Court held that prisoners retained a limited constitutional right to intimate association, and "any limitations must be reasonably related to legitimate penological interests."

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Manning v. Ryan

- The 8th Circuit also noted that in *Overton v. Bazzetta*, the US Supreme Court explained that limitations on visitation privileges may be unconstitutional if “applied in an arbitrary manner to a particular inmate but not if imposed for a limited period as a regular means of effecting prison discipline.”
- The 8th Circuit announced that it has joined the 7th Circuit in holding that prison/jail officials who permanently or arbitrarily deny an inmate visits with family members in disregard of the factors described in *Turner* and *Overton* have acted in violation of the Constitution.

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TURNER FOUR FACTOR TEST

- 1) Is there a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it?
 - Connection cannot be so remote as to render the regulation arbitrary or irrational.
- 2) Are there alternative means of exercising the right that remain open to the inmates?
 - Alternatives, if they exist, will require some judicial deference to corrections officials' expertise.
- 3) What impact will accommodation of the asserted constitutional right have on the staff, the other inmates and on the allocation of prison/jail resources in general?
- 4) Are ready alternatives for furthering the governmental interest available?
 - This is looking at whether the regulation represents an exaggerated response to the correctional facility's concern. If there is a ready alternative that fully accommodates the prisoner's rights at de minimis cost to valid penological interests, courts will consider it evidence of unreasonableness.

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TURNER FOUR FACTOR TEST

- Courts show a lot of deference to corrections authority in this area
- Officials get “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*, 441 US 520 (1979)
- *Turner* requires that authorities show more than a formalistic logical connection between a regulation and a penological objective

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- But *Overton* dealt with restrictions of visits from children and upheld the Michigan DOC's regulation. What's the difference?

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Manning v. Ryan

- The difference is in the wording of the policy itself.
- The policy in *Manning* was a complete ban of visitation with minor children.
- The policy in *Overton* was more narrowly tailored.
 - There were instances, such as close family relation, inmate not on discipline, inmate was not in for a sex offense involving minors, etc., in which the visitation was allowed.

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Human Rights Defense Center v. Baxter County, Arkansas

- This is a First Amendment mail case. The 8th Circuit's initial framing of the case should not be overlooked.
 - "This case, which pits First Amendment free-speech rights of a publisher against important correctional-security interests, presents a vestigial dilemma from the pre-digital communication era. Technology may soon assign the issue to relic status. But, in the meantime, our task is to answer the question of whether a publisher's constitutional rights have been infringed upon by a prison policy limiting most communication with inmates to postcards—in a facility with no electronic kiosk or similar device capable of communicating the publisher's materials."

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HRDC v. Baxter County

- In January 2012, the Sheriff of Baxter County, Arkansas, initiated a new policy regulating incoming mail to inmates and detainees at the Baxter County Jail.
- A month before the policy went into effect the Sheriff did a press release explaining the rationale for the policy.
 - "First, it is being undertaken as a security precaution as a proactive measure to decrease the amount of contraband coming into the Detention Center. Second, it is being undertaken as a cost savings measure to the county, which has to supply postage for indigent inmates."
 - At deposition, the Sheriff also stated that the policy was designed to conserve resources because it made inspecting and processing the mail more efficient, allowing limited jail staff more time to carry out other duties.

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HRDC v. Baxter County

- The policy provided "with the exception of privileged mail or legal mail, the only type of mail the jail staff are permitted to accept for the inmate is post cards. Other mail will be marked for return to sender."
- Between August 2016 and May 2017, the Human Rights Defense Center HRDC, mailed several unsolicited batches of material to multiple jail inmates.
 - HRDC is a non-profit organization with a mission "to educate prisoners and the public about the destructive nature of racism, sexism, and the economic and social costs of prisons to society."

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HRDC v. Baxter County

- The publications included a number of materials with subscription forms including:
 - Prison Legal News
 - The Habeas Citebook; Ineffective Assistance of Counsel
- Most of the materials, including the subscription forms were returned marked "Refused", "Return to Sender Insufficient Address", or "Return to Sender Postcards Only".
 - Sidenote: There is a huge difference legally between a postcard only policy and a policy that allows for exceptions. Jail officials don't always get this and will use the "postcard only" language when that is not accurate (which of course can create lawsuits).

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HRDC v. Baxter County

- HRDC filed suit alleging that:
 - The jail's postcard only policy violated HRDC's First Amendment right to communicate with inmates; and
 - The jail's rejection of HRDC's mailings violated HRDC's Fourteenth Amendment procedural due process rights to notice and an opportunity to appeal the jail's decision.
- The District Court partially granted summary judgment for HRDC, holding that the rejection of HRDC's mailing on a specific date was a technical violation of HRDC's due process rights but found that the policy was reasonably related to legitimate penological goals and that HRDC's First Amendment rights were not violated.
 - HRDC was awarded \$4.00 in damages.

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HRDC v. Baxter County

- The 8th Circuit started its analysis by addressing the First Amendment question and it cited long standing law from the US Supreme Court cases *Bell v. Wolfish* (1979) and *Thornburgh v. Abbott* (1989).
 - "The Supreme Court has made it clear that persons who are incarcerated do not forfeit First Amendment protection of their rights to freedom of speech and religion at the prison gate."..."Nor do prison walls bar free citizens from exercising their own constitutional rights by reaching out to those on the inside."..."There is no question that publishers who wish to communicate with those who, through subscription, willingly seek their point of view have a legitimate First Amendment interest in access to prisoners."

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HRDC v. Baxter County

- The 8th Circuit also noted that these rights are not absolute.
 - "However, maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees."
- The 8th Circuit noted that in order to determine whether a jail or prison policy infringes on the First Amendment rights of inmates, as well of those who seek to communicate with inmates, the court must determine if the policy is reasonably related to legitimate penological interests.

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HRDC v. Baxter County

- The 8th Circuit then cited *Turner v. Safley* and *Overton v. Bazzetta* in outlining the factors a court must analyze to determine if a jail/prison policy is constitutional. ("These so-called *Turner* factors present factual and legal questions for which the district court must necessarily find the facts that either support or undermine the constitutionality of a particular policy....").
- The 8th Circuit also reiterated that "[c]ourts are to give substantial deference to the professional judgment of prison (jail) administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them."

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HRDC v. Baxter County

- The US Supreme Court has made it clear that while alternative means of communication do not have to be ideal, they do have to be available.
- If the alternative means are illusory, impractical, or otherwise unavailable that would weigh in favor of the plaintiff.
 - HRDC was asserting that the policy is a de facto total ban on publishers communicating with inmates.
 - The Supreme Court has twice issued opinions which warned that de facto permanent bans on inmate access to communication with outsiders would present a serious constitutional issue.

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HRDC v. Baxter County

- The 8th Circuit held that the District Court had not made a determination on the extent to which a ban on access to inmates may violate the First Amendment rights of outsiders.
 - In a footnote, the 8th Circuit stated, "the rights of outsiders to communicate are correlative to the rights of prisoners and must be analyzed under the same standard. But it is wrong to conclude that outsiders' rights are therefore strictly dependent on a prior request from an inmate."
 - The 8th Circuit noted that as written the policy looked like a total ban and that the jail has no electronic reading kiosk and it stopped maintaining a book cart/library for inmate use.

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HRDC v. Baxter County

- The 8th Circuit ordered the lower court to do a *Turner* analysis to determine if the policy was a de facto total ban.
- The 8th Circuit then addressed the due process claims.
 - Generally, when mail is rejected, the sender is entitled to notice of the rejection, the reason for the rejection and a reasonable opportunity to appeal the rejection.
 - The US Supreme Court expressly stated in *Procunier v. Martinez* (1974) that "different considerations may come into play in the case of mass mailings."

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HRDC v. Baxter County

- The 8th Circuit noted that, "prior cases suggest that, when one edition of a publication is impounded because one or more advertisements violate prison policies, due process may require the prison to notify the publisher with specific reasons for the impoundment and an opportunity to challenge the decision. But due process does not require copy-by-copy notice if later denials of identical publications amount to the routine enforcement of a rule with general applicability."
- The 8th Circuit also noted that HRDC had challenged the validity of the postcard-only policy under *Turner*, not whether its mailings were wrongly rejected if the policy is valid.

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HRDC v. Baxter County

- It is important to note that the County did not appeal the District Court's finding that it had technically violated due process by marking "Refused" without providing an explanation.
- The 8th Circuit found that the District Court did not err by awarding \$1.00 of nominal damages for each of the four types of mailings which were rejected.
- Notice that the 8th Circuit did not make a ruling on whether this policy was constitutional or not. They held that they could not preform a *Turner* analysis because the District Court had not determined "what, if any, alternative means are available...."

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Leftwich v. County of Dakota

- On October 27, 2016, a nurse at a hospital in Burnsville, Minnesota contacted 911 to request that an Eagan police officer respond to the emergency room where a woman with a broken jaw stated that her boyfriend (Cameron) had punched her in the face at a house in Eagan.
- Cameron and his mother were in the emergency room lobby. Officer Wegner, of the Eagan Police Department, spoke to the victim over the phone. The victim stated that she had been assaulted by Cameron and provided a physical description.

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- Officer Wegner contacted the Burnsville Police Department and requested that they arrest Cameron for assault.
- Burnsville police took Cameron into custody and transferred custody to Officer Rundquist of the Eagan Police Department. Officer Rundquist was sent to the emergency room by Officer Wegner to pick up Cameron from the Burnsville authorities.
- Cameron admitted to Rundquist that he had punched his girlfriend out of anger and made statements regarding anger toward his mother. Rundquist placed Cameron in a police car and drove him to the Dakota County Jail (approx. 30 minute trip).

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- Wegner also sent Officer Rezny to the emergency room to obtain statements regarding the assault from the victim and Cameron's mother.
- The victim told Rezny that Cameron often got mad at her and that she thought he might be bipolar and manic.
- Cameron's mother told Rezny that Cameron was angry, "hurtful to himself", had "mental issues" and that he had recently hit himself in the head with the claw-end of a hammer and jumped from a moving car.
- There was a dispute in testimony over whether Rezny asked Cameron's mother if she felt he was suicidal.

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- During the drive to the jail, Cameron told Rundquist that he "probably needed anger management and was trying to turn his life around for his daughter." Cameron made no mention of suicide or self harm.
- Wegner radioed Rundquist during the trip and advised that she had prepared and sent paperwork required by the jail before they would accept an arrestee (a jail intake form and a victim notification card).
- Wegner checked the "no" box on the intake questions asking if Cameron had mental health issues or was suicidal. Wegner testified that she had no interaction with Cameron and answered "no" because the other officers would have told her if they had any information Cameron was suicidal.

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- At the jail, Rundquist briefly spoke with jail staff. He heard Cameron answer "no" when he was asked if he had attempted suicide or tried to do serious harm to himself. Cameron also answered "no" when asked if he was thinking about harming himself.
- Cameron answered "yes" when asked if he had a mental illness. Cameron explained that he had "dual disorder". Rundquist did not express any concern about Cameron's mental health.
- The booking officer testified that his practice was to observe inmates to assess whether their behavior or demeanor suggested self-harm, even if the inmate denied having those thoughts.

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Leftwich v. County of Dakota

- The booking officer also testified that he "did not have a feeling that [Cameron] was going to hurt himself."
- A second booking officer completed the booking process. The second booking officer asked Cameron if he had suicidal thoughts or plans, and Cameron again stated "no". The second booking officer also noted that "Cameron's behavior did not suggest there was anything to be concerned about."

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Leftwich v. County of Dakota

- A contract nurse reviewed Cameron's intake form and saw that he scored a "1" because he self-reported a dual disorders and scheduled a visit with him for October 30th (within 72 hours of booking as required by the correctional medical contract).
- A county social worker reviewed Cameron's file but did not meet with him on October 28th because of "limited hours and other duties." It was the practice of the social worker to meet with inmates who scored a "1" within 24 hours.

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- On October 28th, a county probation officer conducted a bail evaluation on Cameron. Cameron told the probation officer that he was previously diagnosed with depression, anxiety, and learning disabilities.
- The probation officer asked Cameron if he needed immediate health services and Cameron said "no".
- Jail staff was not privy to the evaluation of the probation officer.
- Later in the day, Cameron went before a judge, bail was set and he was returned to the jail.

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- At 9:51 p.m. deputies moved Cameron to a cell in the housing unit where "well-being checks" are required every 25 minutes.
- During a "well-being check" Cameron tapped on his window and asked Deputy Olson about arranging for a visitor the next day.
- During a "well-being check" at 11:35 p.m. Deputy Olson saw Cameron lying on his bed.
- At 11:56 p.m. Deputy Olson discovered Cameron hanging from the top of his bunk. Life-saving efforts were unsuccessful, and Cameron was pronounced dead.

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Leftwich v. County of Dakota

- The trustee for Cameron's estate filed suit under section 1983, alleging failure to provide adequate medical care claims against all defendants and failure to train claims against the City of Eagan and Dakota County. There was also a state law wrongful death claim filed against the City of Eagan, Sergeant Wegner, the County and the county social worker.
- The District Court granted summary judgment for all defendants and found that the City and County could not be held liable for failure to train since the officers and deputies had no actual knowledge the Cameron was a substantial risk for suicide and did not act with deliberate indifference to a suicide risk.
 - The state law claims were dismissed based on a finding that statutory immunities applied under Minnesota law.

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Leftwich v. County of Dakota

- Leftwich appealed the granting of summary judgment to the defendants on the section 1983 claims, as well as the determination on the state law claims and a ruling on procedural motions.
 - We're only going to discuss the 1983 claims because the state law claims are handled under Minnesota law and so the court's rulings aren't necessarily applicable in Missouri.
 - The two 1983 claims on appeal are:
 - 1) Failure to provide adequate medical care against all defendants; and
 - 2) Failure to train against the City of Eagan and the County.

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Leftwich v. County of Dakota

- Municipal entities (the City and the County) may be held liable for constitutional violations if a violation resulted from:
 - 1) An official policy of the municipality;
 - 2) An unofficial custom of the municipality; or
 - 3) A deliberately indifferent failure to train or supervise.
- Since the plaintiff didn't allege an unconstitutional policy or custom, there must be a finding of deliberate indifference.
- In jail suicide cases, municipal officials violate the Eighth Amendment prohibition on cruel and unusual punishment if they are deliberately indifferent to serious medical needs, including the risk of suicide.
 - pretrial detainees are technically a 14th Amendment issue, but the deliberate indifference analysis is the same as it would be under the 8th Amendment.

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Leftwich v. County of Dakota

- The 8th Circuit noted that, “[d]eliberate indifference is a rigorous standard akin to criminal recklessness, something more than mere negligence; a plaintiff must show that a prison (jail) official actually knew that the inmate faced a substantial risk of serious harm and did not respond reasonable to that risk.... It requires a showing that the official was subjectively aware of the risk.”
- When the claim is that jailers failed to discover the inmate’s suicidal tendencies, the issue is whether a defendant possessed the level of knowledge that would alert them to a strong likelihood that an inmate would attempt suicide.

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Leftwich v. County of Dakota

- Negligence is not enough.
 - “An official’s failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.”
- The 8th Circuit found that there was not evidence to show that any of the defendants had actual knowledge of a risk of suicide based on the information they had.
 - “Because Leftwich failed to show that any of the individual defendants (or any other relevant official) was deliberately indifferent to and subjectively aware of the risk of suicide there was no underlying constitutional violation, and the individual defendants as well as the City and the County were entitled to summary judgment of the section 1983 claims.”

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Davis v. Buchanan County

- A few points before we discuss this case.
 - This opinion is from an interlocutory appeal from the denial of motions to dismiss and motions for summary judgment.
 - There are actually two different 8th Circuit opinions.
 - The facts recited by the court are taken in the light most favorable to the Plaintiff.
 - If you are named or are familiar with people named please do not dispute the facts as they are only being recited as described by the Court.
 - This case is still ongoing in the lower courts and the US Supreme Court denied certiorari from the 8th Circuit.
 - There are a lot of moving parts in this decision and a rather complex fact pattern. Names are being included for the sake of clarity in outlining the facts and the holdings of the Court.

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Davis v. Buchanan County

- The first 8th Circuit opinion issued in this case dealt with the District Court denying Buchanan County's motion to dismiss.
- The County claimed sovereign immunity to the state law wrongful death suit, which the District Court denied because it felt that the County's contract with ACH which required ACH to name the County as an additional insured waived sovereign immunity.
- The 8th Circuit noted that state law governed the answer and that the Missouri Supreme Court hadn't previously ruled on the matter so they would need to predict how they thought the Missouri Supreme Court would rule.

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Davis v. Buchanan County

- Generally, Missouri law immunizes political subdivisions from state-law claims through the doctrine of sovereign immunity.
- RSMo. 537.610 allows political subdivisions to purchase liability insurance for tort claims, made against the political subdivisions and waives sovereign immunity to the maximum amount of the insurance policy for the purposes covered by the policy.
- The 8th Circuit determined that the County's contract with ACH created a waiver of sovereign immunity under Missouri law and held that the contract provision requiring ACH to list the County as an additional insured on ACH's liability insurance policy constituted the County purchasing insurance.
 - This could change if the Missouri Supreme Court issues an opinion which says otherwise.

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Davis v. Buchanan County

- On October 26, 2015, Justin Stufflebean was sentenced to 15 years in prison by the Circuit Court of Buchanan County, Missouri. During his sentencing hearing, Stufflebean's longtime doctor testified on the severity of his Addison's disease and hypoparathyroidism.
- Stufflebean's doctor testified that Stufflebean was dependent upon cortisol to be given to him exogenously, especially during times of stress. The doctor said that Stufflebean suffered from one of the lowest calcium levels that had ever been seen at the hospital and that it makes him quite ill and that it can be life-threatening and needed to be controlled.

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Davis v. Buchanan County

- The doctor also testified that Stufflebean's Addison's disease would flare up, resulting in fatigue, malaise that's followed by severe nausea, vomiting and dehydration. The doctor stated that if is not intervened upon in the hospital it can result in death within 24 to 48 hours.
- Stufflebean had been hospitalized 16 times in the last year for treatment, not counting numerous emergency room and doctor visits.
- Deputy Gross was assigned to the courtroom during the sentencing hearing. Gross's duties included maintaining order in the courtroom and transporting inmates from the courthouse to the jail.

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Davis v. Buchanan County

- As the transporting officer, Gross was expected to tell the jail booking officer if he believed a new inmate was a medical, mental health or suicide risk.
- After sentencing, Gross walked Stufflebean to the jail. The booking officer, Deputy Nauman, asked Gross if he "believes that inmate is a medical, mental health or suicide risk now?" Gross did not report Stufflebean's medical conditions or treatments to Nauman and Nauman recorded "no" to the question on Stufflebean's intake form.

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- Nauman completed the remaining intake questions with Stufflebean. Stufflebean had previously been booked into the jail in 2014 and was labeled as having a "Special Conditions – Medical."
- Nauman answered "no" to the question, "Was inmate a medical mental health or suicide risk during any prior contact or confinement with department?"
- In response to the question "Are you currently under a physician's care? If yes, explain," Nauman answered "no".
- In response to the question "Are you currently taking any medications? If yes, list types, dosage, and frequency," Nauman listed Stufflebean's various medications, but not their dosages or frequencies.

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Davis v. Buchanan County

- Nauman recorded Stufflebean's various ailments, including abdominal pain, asthma, ulcers, runny nose, nasal congestion, unexplained weight loss, loss of appetite, night sweats, and fatigue.
- Nauman answered "yes" to the question, "Did you refer the inmate to medical?" Nauman did not classify Stufflebean as "High Risks—Medical" or "Special Conditions—Medical". Nauman testified that the day Stufflebean was booked, he contacted a nurse to let them know "he booked in somebody that has medical issues."

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Davis v. Buchanan County

- Advanced Correctional Healthcare (ACH), provided on-site licensed practical nursing coverage at the Buchanan County jail. Nurse Slagle was on duty when Nauman referred Stufflebean to the nurses for medical treatment.
- It was alleged that Slagle was the nurse contacted by Nauman. Stufflebean was not visited by a nurse during his 11 hours in the holding cell booking area immediately after intake.
- The day of Stufflebean's booking, Slagle received his medications, which were brought to the jail by Stufflebean's mother. Slagle did not contact a doctor for an order to administer Stufflebean's medications that day.

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- Slagle also did not enter the medications into the jail's system before 7 a.m. the following day. Because medications must be entered by 7 a.m. to be administered that same day, Stufflebean did not receive medications on October 27th.
- On October 27th, Stufflebean filed a formal request for his medication, stating: "I called to have my medicine brought in. I have Addison's and hypoparathyroid disease. Medications brought to jail."
- Slagle entered medications into the jail's system after 7 a.m. on October 27th, but did not contact a doctor for approval to administer them that day.

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Davis v. Buchanan County

- Nurse Helsel was on duty the morning of October 28th. It was disputed whether Helsel administered Stufflebean's medications on October 28th after the medical director approved it.
 - She testified that she did, but she had no recollection of giving them and could not point to supporting medical records.
- Having not received his medication daily, Stufflebean's condition deteriorated during his three days at the jail. He was not eating, was getting weaker and vomited at least once.

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Davis v. Buchanan County

- ACH's policies and its contract with the County established a system to oversee ACH's operations at the jail. Per the contract, Sheriff Strong, the final decision-maker for policies and procedures at the jail, was to attend Continuing Quality Improvement meetings with ACH to review its healthcare reports on the operation of its healthcare services and the general health of inmates at the jail.
- Sheriff Strong testified that he had no system in place to monitor the accuracy of ACH's healthcare reports, trusting ACH was providing proper care.

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- Sheriff Strong also testified her never compared prisoners' medical grievances to ACH's reports to verify the accuracy of ACH's claimed "zero medical grievances" reporting from 2014 to 2015.
- Captain Hovey, the Jail Administrator and Responsible Health Authority, was responsible to oversee the medical operations of the jail, including arranging and ensuring the quality and accessibility of all health services to inmates.
- Hovey was also responsible for monitoring to ensure all aspects of inmate care for the treatment of illnesses classified as "serious." Although Sheriff Strong expected Hovey was exercising "constant oversight" over ACH, Hovey did not implement a "formal process or analysis" to systemically monitor inmates' medical grievances.

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Davis v. Buchanan County

- On October 29th, Stufflebean was transferred from the Buchanan County Jail to the Western Reception Diagnostic and Correctional Center (WRDCC) for the Missouri Department of Corrections (DOC). DOC was contracted with Corizon, LLC to provide medical services, including nurses and doctors at WRDCC.
- During intake at WRDCC, Stufflebean told the on-duty nurse he had Addison's disease and hypoparathyroidism, had current symptoms of vomiting, weakness and tachycardia, and that he had been to the hospital to see a physician 16 times in the last year for complications from Addison's disease.

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Davis v. Buchanan County

- The WRDCC nurse recorded his blood pressure and noted that Stufflebean was carrying or taking various medications. The nurse did not ask when he last took his medications.
- The nurse also recorded that Stufflebean was lethargic with a weak gait, but also that he did not show signs of "obvious pain, bleeding, injuries, illness or other symptoms suggesting need for immediate referral."

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Davis v. Buchanan County

- On October 30th, Dr. Covillo, a Corizon employee, performed a physical examination on Stufflebean. During the examination, Dr. Covillo charted Stufflebean's Addison's disease and hypoparathyroidism. Dr. Covillo testified that Stufflebean "seemed very stable," not showing symptoms of nausea, vomiting, dizziness, and tachycardia that were reported the previous day.
- Dr. Covillo admitted that Stufflebean's blood pressure was not taken on the day of his exam, and that he had access only to Stufflebean's blood pressure taken by the nurse the day before. Dr. Covillo did not attempt to determine when Stufflebean had last taken his medication.
 - It was not disputed that Stufflebean did not receive his medications at WRDCC.

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- Stufflebean's health significantly deteriorated while he was at WRDCC. In the early morning hours of October 31st, two separate medical emergency calls (Code 16) were made on Stufflebean's behalf.
- The nurses on-duty did not document the reason for the first call. For the second call, a nurse documented the next day that Stufflebean was found lying on his abdomen on the floor of his cell after falling due to feeling weak.
- A towel with greenish liquid on it was close to Stufflebean's bunk. A nurse reported asking Stufflebean whether he had recently eaten. He responded that he "took a few bites of corn a couple days ago, because I don't like food." He also told the nurse he was nauseated.

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- Shortly after the second Code 16, Stufflebean was brought to the Center's infirmary, and delivered to the care of Nurse Munger. Stufflebean told Nurse Munger that he had Addison's disease, that he had been experiencing a flare up since he was sentenced, that he had not eaten in three days, and that when ill like this in the past, he would go to the hospital and receive intravenous fluids.
- Munger gave him an anti-nausea medication and milk. She told him that he needed to eat and sent a medical service request to mental health to help with his stress. Munger also told him to make a service request to Dr. Covillo if he needed to see the doctor again. Munger did not contact a doctor or report Stufflebean's condition to the on-coming nurse.

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Davis v. Buchanan County

- Munger released Stufflebean back to his cell. The officer who escorted Stufflebean back to his cell reported that Stufflebean was "weak and incoherent" and looked "dazed like he was sick." The officer also recalled that Stufflebean stumbled and fell down after ten to twenty steps, falling first down to his knees and then slowly down to his face.
- The officer said that Stufflebean didn't say anything and only "made grunting noises." The officer then got a wheelchair and wheeled the slumped over inmate to his cell and helped him into his bunk.

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Davis v. Buchanan County

- Less than three hours later, a third Code 16 was called on Stufflebean's behalf after he was found not moving on the floor of his cell. He was taken to the infirmary and soon became unresponsive.
- A fourth Code 16 was called, and the medical staff performed CPR until an ambulance arrived. Stufflebean died in the hospital two weeks later on November 16, 2015. A Jackson County medical examiner declared his cause of death as "complications of polyglandular endocrinopathy."

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Davis v. Buchanan County

- Stufflebean's parents brought section 1983 claims and wrongful death claims against Strong, Hovey, Gross, Nauman, Dr. Covillo, Munger, Slagle, Helsel, ACH and Corizon (among others).
- On summary judgment, the District Court ruled that Gross, Dr. Covillo, Munger, Slagle and Helsel were not entitled to qualified immunity from the section 1983 deliberate indifference claim. The District Court concluded that the *Monell* claim against ACH survived and that Corizon could not assert qualified immunity.
- The District Court also determined that Sheriff Strong and Captain Hovey were not entitled to qualified immunity from supervisor liability under section 1983 and that Gross and Nauman were not entitled to official immunity under Missouri law for the wrongful death.

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Davis v. Buchanan County

- Ten of the defendants appealed the District Court ruling on different grounds.
- Dr. Covillo and nurses Munger, Slagle and Helsel appealed the denial of qualified immunity. The 8th Circuit determined that a threshold issue of whether those medical defendants, who were employees of a private medical services provider, could assert a defense of qualified immunity.
- The 8th Circuit acknowledged that this was a matter of first impression and that the 8th Circuit had not directly addressed this question in prior cases.

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Davis v. Buchanan County

- The 8th Circuit noted that the medical defendants were considered state actors for purposes of the section 1983 action but also noted that private individuals, like state actors, are not necessarily entitled to assert the defense of qualified immunity in defending section 1983 claims.
- To determine whether the medical defendants were entitled to assert qualified immunity, the 8th Circuit applied the factors outlined by the US Supreme Court in *Richardson v. McKnight* (1997).

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Davis v. Buchanan County

- According to the *Richardson* Court, the availability of qualified immunity to state actors depends on two factors:
 - 1) The general principles of tort immunities and defenses applicable at common law; and
 - 2) The reasons courts have afforded protection from suit under section 1983.
- The 8th Circuit found that the first factor – the historical availability of immunity – did not support the medical defendants asserting qualified immunity.
 - "Historical analysis does not reveal a firmly rooted tradition of qualified immunity for employees of private, systematically organized medical providers like ACH and Corizon."

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Davis v. Buchanan County

- The 8th Circuit also noted that none of the other circuits had found a firmly rooted tradition of immunity for similarly situated privately-employed medical professions defending this type of claim.
 - The 8th Circuit cited holdings from the 5th, 6th, 7th, 9th, 10th, and 11th Circuits.
- The 8th Circuit rejected an attempt to cite dicta from *Richardson*, where the Supreme Court noted, "Apparently the law did provide a kind of immunity for certain private defendants, such as doctors and lawyers, who performed services at the behest of the sovereign."

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- The 8th Circuit noted that this historical immunity was from "simple negligence or want of skill" and noted that historically private defendants "were indictable when criminally guilty of malpractice."
- The 8th Circuit had previously likened the level of culpability required to demonstrate deliberate indifference on the part of prison officials to criminal recklessness.
 - "Even if private physicians had some immunity from tort claims under common law, the deliberate indifference claims here (akin to criminal recklessness) are outside its scope."

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Davis v. Buchanan County

- The 8th Circuit also rejected arguments that it should focus on the nature of the work and not the nature of the employment.
 - The Court noted that prior cases in this vein dealt with individuals who were "not employed by a private firm, systematically organized to assume a major lengthy administrative task."
 - "employees of ... an employer not systematically organized to perform the major administrative task ... could assert qualified immunity from claims arising from their work at a state ... facility.... These medical defendants are employees of systematically organized firms, tasked with assuming a major lengthy administrative task. They are factually dissimilar to the individuals entitled to qualified immunity in *Lawyer*, but like those not entitled to assert qualified immunity in *Richardson*."

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Davis v. Buchanan County

- The 8th Circuit also found that the second *Richardson*, factor – the weight of the policy reasons for affording protection from suit under section 1983 – did not support permitting the medical defendants to assert qualified immunity.
- The Supreme Court applies three policy considerations to determine whether private individuals, as state actors, may assert qualified immunity:
 - 1) Avoiding unwarranted timidity in the performance of public duties;
 - 2) Ensuring that talented candidates are not deterred from public service; and
 - 3) Preventing the harmful distractions from carrying out the work of government that can often accompany damages suits.

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Davis v. Buchanan County

- The 8th Circuit noted that the first policy consideration was less likely present, or at least not special, when a private company, subject to competitive market pressures works as a state actor.
 - "Marketplace pressures give private firms strong incentives to avoid overly timid, insufficiently vigorous, unduly fearful or non-arduous employee job performance."
 - The 8th Circuit also noted that ACH and Corizon are for profit companies, that both were insured and there was no indication that their insurance would not cover the types of claims made in this case.
- The 8th Circuit also held that the contract language did not support the conclusion that the medical providers did not perform their administrative task independently, with relatively less ongoing direct state (government) supervision.

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- "ACH and Corizon had their own procedures and policies for their medical personnel to follow. While ACH's contract with the County dictated its performance was reviewed by the County, in practice, Strong and Hovey's oversight was apparently negligible.... Like the County and ACH, there is no indication that the Department of Corrections had significant oversight over Corizon's medical operations."
- The 8th Circuit also found that the second policy consideration did not favor allowing the medical defendants to assert qualified immunity.

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Davis v. Buchanan County

- "Private individuals have freedom to select other work...that will not expose them to liability for government actions. Because government employees will often be protected from suit by some form of immunity, those working alongside of them could be left holding the bag.... But private firms have the ability to remedy these concerns. Generally, private firms insure themselves to cover claims against themselves and their employees, are not subject to various civil service law restraints and unlike the government may offset any increased employee liability risk with higher pay or extra benefits."
- "ACH and Corizon can operate like other private firms; they need not operate like a typical government department. ACH and Corizon have various tools available to attract and retain talented employees, even if their employees can seek alternative, non-government employment."

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Davis v. Buchanan County

- While the 8th Circuit did find that the third policy consideration – preventing harmful distractions caused by lawsuits – slightly favored allowing the assertion of qualified immunity; it held that on balance the three policy considerations supported the conclusion that the medical defendants were not entitled to qualified immunity.
- Since the medical defendants couldn't assert qualified immunity, the 8th Circuit declared that they were unable to immediately appeal the District Court's denials of motions to dismiss and motions for summary judgment.
- The 8th Circuit made a point to say, "this court expresses no opinion on the ultimate validity of the parents' underlying section 1983 claim against these medical defendants."

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Davis v. Buchanan County

- The holding relating to qualified immunity for the medical defendants also precluded ACH and Corizon's appeal.
 - The companies didn't assert qualified immunity but rather asserted they were not liable because there was no underlying constitutional violation.
- The Court then turned to the denial of qualified immunity for Strong, Hovey and Gross.
- The Court noted that a public official is entitled to qualified immunity unless their conduct violated a constitutional right which was clearly established.
 - "Qualified immunity is appropriate where no reasonable fact finder could conclude that the facts when viewed in a light most favorable to the plaintiff show that the officers' conduct violated a clearly established constitutional right."

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Davis v. Buchanan County

- The 8th Circuit noted that it is well established that deliberate indifference to a prisoner's serious medical needs is cruel and unusual punishment in violation of the 8th Amendment.
- The Court has defined a "serious medical need" as "one that has been diagnosed by a physician as requiring treatment, or one that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention."
 - On appeal it was not disputed that Stufflebean suffered from a serious medical condition.

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Davis v. Buchanan County

- The 8th Circuit noted that under the subjective prong, to show deliberate indifference, "the official must know of and disregard the inmate's serious medical need."
 - "Generally, the actor manifests deliberate indifference by intentionally denying or delaying access to medical care, or intentionally interfering with treatment or medication that has been prescribed. When considering whether an official deliberately disregarded a risk, this court must avoid determining the question with hindsight's perfect vision."
- Strong and Hovey also asserted that the supervisor liability allegation failed because they did not directly participate in Stufflebean's treatment and were not put on notice of a pattern of constitutional violations.

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Davis v. Buchanan County

- A supervisor may be liable under section 1983 if their failure to properly supervise and train the offending employee caused a deprivation of constitutional rights.
- When a supervising official who had no direct participation in an alleged constitutional violation is sued for failure to train or supervise the offending actor, the supervisor is entitled to qualified immunity unless the plaintiff proves that the supervisor:
 - 1) Received notice of a pattern of unconstitutional acts committed by a subordinate; and
 - 2) The supervisor was deliberately indifferent to or authorized those acts.

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Davis v. Buchanan County

- The 8th Circuit noted that, "[t]his rigorous standard requires proof that the supervisor had notice of a pattern of conduct by the subordinate that violated a clearly established constitutional right. Notice is the touchstone of deliberate indifference in the context of section 1983 municipal liability."
- "Allegations of generalized notice are insufficient. To impose supervisory liability, other misconduct must be very similar to the conduct giving rise to liability. In other words, the supervisor must have notice of a pattern of conduct that was sufficiently egregious in nature. A single incident, or a series of isolated incidents, is usually insufficient to infer a pattern.... Similarly, a number of individual or isolated incidences of medical malpractice or negligence do not amount to deliberate indifference without some specific threat of harm from a related system wide deficiency."

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Davis v. Buchanan County

- The 8th Circuit also noted that, "A supervisor's mere negligence in failing to detect and prevent a subordinate's conduct is not enough for liability under section 1983."
- The District Court used the fact that Strong and Hovey had been named in two lawsuits which alleged ACH's medical personnel failed to provide medications and that Strong and Hovey were deliberately indifferent as supervisors for failing to supervise and train as evidence of notice of constitutional violations.

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Davis v. Buchanan County

- The 8th Circuit pointed out that it had not held that two separate lawsuits, met the rigorous standard for putting supervisors on notice of a pattern of constitutional violations.
 - "It is unlikely that two allegations of inadequate care by two inmates can put a supervisor on notice of systematic failures."
- The 8th Circuit held that the two previous lawsuits were insufficient to put Strong and Hovey on notice of a pattern of constitutional violations in the jail.
 - The Court noted that one laws suit had been dismissed at the District Court level and the other lawsuit was settled with Strong, Hovey and other defendants denying the allegations. The Court did state, "Even if Strong and Hovey accepted responsibility in their settlement, this individual complaint is insufficient to establish a pattern of constitutional violations."

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Davis v. Buchanan County

- The 8th Circuit also rejected the argument that Strong and Hovey had a duty to investigate complaints and their failure to do so showed deliberate indifference.
 - "Answering the complaints (lawsuits) and denying the allegations necessarily required an investigation into the claims and the determination that they were false. The investigation (in one lawsuit) went even further, completing discovery for the unsuccessful lawsuit. Strong and Hovey did not fail to investigate the claims. An investigation into complaints, even if flawed, does not amount to a failure to investigate that supports a finding of ignoring misconduct."

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Davis v. Buchanan County

- Similarly, the Court rejected the argument that Strong and Hovey's failure to review the accuracy of ACH's "zero medical grievances" reports made them liable as supervisors.
 - "A supervisor would not escape liability if the evidence showed that he merely refused to verify underlying facts that he strongly suspected to be true or declined to confirm inferences of risk that he strongly suspect to exist. The subjective standard does not invite prison supervisors to bury their heads in the sand."
- The plaintiffs' expert identified about 250 medication errors and 26 medical grievances that were not included in ACH's reports. The expert concluded that Strong and Hovey's lack of oversight breached the administrative standard of care.

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Davis v. Buchanan County

- The 8th Circuit stated that, "this lack of oversight and breach of the standard of care, while arguably negligent, does not meet the rigorous standard to show deliberate indifference. Strong and Hovey did not know about ACH's systematic failures because ACH presented inaccurate reporting. This is not an instance of supervisors ignoring obvious signs of constitutionally inadequate medical care. Strong and Hovey's failure to verify the accuracy of ACH's reporting is insufficient to create liability under section 1983."

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Davis v. Buchanan County

- Turning to the denial of qualified immunity for Gross, the 8th Circuit noted that the plaintiffs did not show that Gross had the subjective intent to cause harm, or that he could not reasonably believe that his response was not deliberately indifferent or reckless.
- The 8th Circuit noted that based on Gross's experience he knew the inmate would be asked questions regarding medical conditions, medications and medical treatment.
 - "From Gross's knowledge, there was ample opportunity for Stufflebean to be referred to medical and meet with medical professionals to address his health issues. The question is not whether the jailers did all they could have, but whether they did all the Constitution requires."

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Davis v. Buchanan County

- The Court also held that Gross's failure to follow written procedures does not constitute per se deliberate indifference.
 - Under the jail's policies, Gross was supposed to listen to courtroom testimony and report known medical conditions.
 - "This court's focus is instead on whether his acts violated Stufflebean's constitutional rights. [T]he issue is whether the government official violated the Constitution or federal law, not whether he violated the policies of a state agency. Because there is no constitution violation, Gross is entitled to qualified immunity."

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Davis v. Buchanan County

- Gross and Nauman appealed the District Court's denial of official immunity on the wrongful death claim.
- Under Missouri law, official immunity protects public officials sued in their individual capacities from liability for alleged acts of negligence committed during the course of their official duties for the performance of discretionary acts.
- The purpose of official immunity is to allow public officials to make judgments affecting the public safety and welfare without the fear of personal liability. Official immunity is applied broadly and courts "must be cautious not to construe it too narrowly lest they frustrate the need for relieving public servants of the threat of burdensome litigation."

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Davis v. Buchanan County

- There is a narrow exception to the application of official immunity. When a public official fails to perform a ministerial duty, they may be held liable for the damages caused by the failure to perform.
- A ministerial act is an act that is merely clerical, meaning it "compels a task of such routine and mundane nature that it is likely to be delegated to subordinate officials. It is to be performed upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority, and without regard to the official's judgment or opinion concerning the propriety or impropriety of the act to be performed."

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Davis v. Buchanan County

- An act is discretionary when there is any room whatsoever for variation in when and how a particular task can be done.
 - Whether an act is discretionary or ministerial depends on the degree of reason and judgment required to perform the act.
 - The fact that an official might exercise poor judgment in a given case does not remove the conduct from being considered a discretionary act.
- The fact that a policy or supervisor conveys authority or a duty to act in a given situation says nothing about whether the act is of a ministerial nature. If the official retains authority to decide when and how that act is to be done official immunity still applies.

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Davis v. Buchanan County

- The determination of discretionary function vs. ministerial function is made on a case-by-case basis by considering:
 - 1) The nature of the public employee's duties;
 - 2) The extent to which the act involves policymaking or exercise of professional judgment; and
 - 3) The consequences of not applying official immunity.
- The 8th Circuit determined that Gross's response to whether he believed Stufflebean was a medical risk at that time required an exercise of discretion and personal judgment.
 - "Even if Gross heard testimony, he was still required to use his judgment to determine whether he believed Stufflebean was a medical risk, per the jail's standards, ... at the time of booking."

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Davis v. Buchanan County

- The plaintiff tried to argue that *Letterman v. Does*, applied.
 - In *Letterman*, the 8th Circuit held that a prison/jail "close observation policy" created a ministerial duty to report a medical emergency when one of the policy's criteria was met. The policy required an officer to check on the inmate every fifteen minutes and report as a medical emergency any instance when they could not observe movement, obtain a verbal response, or when it appeared that an inmate was not breathing.
 - The 8th Circuit said that *Letterman* didn't apply to this case because the *Letterman* scenario did not depend on the officer's assessment of whether a medical emergency actually existed and there were not specific circumstances that the transporting officer must report to the booking officer.

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Davis v. Buchanan County

- Nauman's duty was a little different than Gross's.
 - The medical intake form asked if the inmate was a medical, mental health or suicide risk during any prior contact or confinement with the department.
- Nauman had provided inconsistent testimony regarding whether he had access to Stufflebean's 2014 intake form.
 - Nauman's inconclusive/inconsistent testimony precluded summary judgment on the issue. Accordingly, the denial of summary judgment on Nauman was upheld.
- The 8th Circuit held that if Nauman had access to the prior form, his duty to correctly answer the question was ministerial.
 - Nauman would have to view the prior form and upon seeing that Stufflebean was previously a "Special Conditions—Medical" he would have been required to answer "yes".

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Did you notice a pattern?

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Questions?

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