Risk Management Bulletin

A Bulletin for Law Enforcement Members of the South Dakota Public Assurance Alliance

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1-800-365-0119

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South Dakota Public Assurance Alliance

http://www.sdpaa.org

Safety Benefits, Inc.
4901 Isabel Pl. Suite 120
Sioux Fall, SD 57108
(888) 313-0839
(605) 334-9567

Mitchell
(800) 408-9040
(605) 996-5072

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Recent Court Decisions

As part of the ongoing Law Enforcement Policies and Procedures Project, the following are recent Court decisions supplied to us by Jack Ryan from the Public Agency Training Council (PATC) and the Legal Liability Risk Management Institute. The South Dakota Public Assurance Alliance (SDPAA) will continue to provide these updates to their members as part of their commitment to assist law enforcement agencies in reducing their potential exposure to civil liability.

Pearson v Callahan

In this case, the United States Supreme Court changes the qualified immunity rules for civil rights lawsuits brought against law enforcement officers.

Commentary by Jack Ryan:

"As a result of going forward on this one-step qualified immunity analysis, there is no clear decision as to whether "consent once removed" is constitutional or not. In those circuits cited by the Court as approving this concept, it is constitutional. In the 10th Circuit, the United States Court of Appeals has concluded it is unconstitutional. This, without a United States Supreme Court decision on the underlying conduct, officer who operates outside of the jurisdiction of Circuits with clear decisions remain without notice with respect to whether using "consent once removed" runs afoul of the Constitution."

To read Jack Ryan's complete article you can open the attachment, *Pearson v Callahan*.

United States v Herring

In this case the U.S. Supreme Court further diminishes the reach of the "Exclusionary Rule". When police mistakes leading to an unlawful search are the result of isolated negligence attenuated from the search, rather than systemic error or reckless disregard of constitutional requirements, the exclusionary rule does not apply.

Doug Kirkus
dkirkus@safety-benefits.com

Janet Sporrer
jsporrer@safety-benefits.com

Commentary by Jack Ryan:

"Where an officer relies upon the validity of a warrant from another law enforcement agency and makes an arrest, evidence seized incident to that arrest is admissible even if it turns out that due to a negligent omission by the agency holding the warrant that the warrant was not valid.

If the mistake is the result of deliberate, reckless, or grossly negligent conduct or the result of systemic problems (pattern of repeated mistakes on validity of warrants) the exclusionary rule may apply to evidence seized incident to arrest on a bad warrant."

To read Jack Ryan's complete article you can open the attachment, *United States v Herring*.

Parent v. City of Bellevue

Police Department Can't Fire Overweight Officer

A municipal police department could not fire an overweight officer for failing to satisfy the department's "wellness" guidelines, the Nebraska Court of Appeals has ruled in reversing judgment.

The department fired the plaintiff after determining that his excessive weight prevented him from performing certain firearms drills. For example, the plaintiff was allegedly unable to get up from a kneeling firing position without using both hands to lift himself from the ground.

But the court decided that the plaintiff should get his job back because he had complied with the only mandatory component of the department's wellness guidelines. "This standard required each officer to accumulate a number of points which were earned by completing physical activities. The record contains the official log of [the plaintiff's] activities and makes it clear that [the plaintiff] had complied with these requirements. Therefore, the city had no grounds to terminate [the plaintiff's] employment pursuant to the physical, mental, and emotional health policy, because he fulfilled its only mandatory requirement," the court said. *Nebraska Court of Appeals, Parent v City of Bellevue, No. A-08-0630. March 17, 2009. Lawyers USA No. 993-570.*

To read the full text of this opinion, you can open the attachment, *Parent v City of Bellevue*.

Corley v United States

In this case, the United States Supreme Court ruled an unreasonable delay in bringing a suspect to court may render the suspect's confession inadmissible.

Commentary by Jack Ryan:

"An unreasonable delay in presenting an arrestee before the court for

arraignment may impact the admissibility of a confession particularly where the delay is not due to transportation and distance to court issues.

Investigators would be well advised in all cases to record and maintain a strict time-line covering all events from arrest to arraignment including such items as transportation time, hospital treatment etc. in order to establish the timeliness of presenting the subject at court.

In a federal case, a delay beyond six hours will require close scrutiny by the court to determine if there was any justification for the delay. If the delay was unnecessary or unreasonable, the confession will be suppressed.

To read Jack Ryan's complete article you can open the attachment, *Corley v United States*.

Aschroft v Iqbal

According to PATC, this is an important Supreme Court Ruling. PATC advises that this summary as well as the actual case should be reviewed if you have cases involving supervisory liability and civil rights claims. In this case the United States Supreme Court raises significant issues with respect to supervisory liability.

Commentary by Jack Ryan:

"While it will take some cases from our federal courts to determine the reach of this decision on supervisory liability for local law enforcement, it is clear that this case will have a dramatic impact on the manner in which supervisory liability will be pled by plaintiffs and defended by defendant supervisors.

Some possible applications:

In cases involving allegations of discrimination, such as racial profiling allegations, it will not be enough to show that a supervisor knew of and acquiesced in the racial profiling but instead will have to show that the supervisor had a purpose to discriminate.

The case will likely have an impact where there is some state of mind requirement such as use of force in jails and prisons. It may not in those cases be enough to show that the supervisor had the requisite malicious and sadistic intention related to the use of force.

Any agency or attorney having a case involving supervisory liability for individual supervisors should read this case and determine how this decision changes the manner in which the claim is handled."

To read Jack Ryan's complete article you can open the attachment, *Ashcroft v Iqbal*.