Failure to Disclose Evidence, & Loss of Evidence/Preservation of Evidence


A man served his full ten year sentence for rape and residential burglary, after which his conviction was vacated because of newly available DNA evidence. He sued a police detective involved in his case, accusing him of fabrication of evidence. Overturning a trial court's dismissal of the lawsuit, a federal appeals court found that the claim did not accrue until the plaintiff was acquitted of all charges, so that the lawsuit was filed in a timely fashion within the applicable three year statute of limitations and was not time barred. The appeals court did not address the detective's qualified immunity defense, as the court below had not reached the issue. Bradford v. Scherschligt, #14-35651, 803 F.3d 382 (9th Cir. 2015).

A former prisoner convicted of murder had his sentence modified to time served after finding documents that appeared to show that the police and prosecutors withheld exculpatory evidence from his defense, in violation of their obligations under Brady v. Maryland. Despite this, a federal appeals court ruled, his claim for damages for the failure to disclose evidence were barred by the principles in Heck v. Humphrey, since his conviction had not been overturned on appeal, expunged by executive order, or declared invalid by a state tribunal, nor had it been called into question by a federal court's issuance of a writ of habeas corpus. An award of damages on his claims would imply the invalidity of his conviction, so no such claim could be pursued. Griffin v. Baltimore Police Dept., #14-1494, 2015 U.S. App. Lexis 18723 (4th Cir.).

A man asserted that he had been assaulted by several people, one of whom was an off-duty police officer. A police detective assigned to investigate the incident was alleged to have done almost nothing on the investigation for six weeks, interviewing no witnesses other than the plaintiff, failing to inspect the crime scene, and following no leads, prior to closing the case. The plaintiff sued the detective for violating his right of access to the courts, claiming that the failure to properly investigate the crime resulted in the spoilation of evidence in his lawsuit against his assailants. He also asserted a claim for municipal liability against the city, claiming that it perpetuated a "code of silence" that had the effect of shielding officers from investigation and promoting misconduct. Summary judgment for the defendants was upheld. A federal appeals court found no denial of access to the courts because the defendants did not conceal any facts from the plaintiff that interfered with him suing his assailants. The plaintiff himself knew all the relevant facts of his case, so the detective was entitled to qualified immunity. The appeals court found that, on the municipal liability claim, there was insufficient evidence presented of any widespread practices by the police department. The appeals court further found that the trial
court acted within its discretion in awarding costs to the city. Rossi v. City of Chicago, #13-3795, 2015 U.S. App. Lexis 10504 (7th Cir.).

A man's conviction for rape and murder was reversed after 29 years of incarceration. A state judge subsequently dismissed the charges, finding that the prosecution had destroyed key exculpatory evidence. In a lawsuit against a prosecutor and state crime lab technicians, the man alleged shocking prosecutorial misconduct, including: destroying potentially exculpatory evidence from the crime scene; arranging for highly suggestive hypnosis of an eyewitness; contriving suggestive identification show-ups; concealing a later confession from a third party that was relayed by a person with no apparent motive to fabricate the report; and enlisting lab technicians to perform an inconclusive DNA test that consumed the last of a sample that could have proven the plaintiff's innocence and identified the true killer. A federal appeals court upheld the denial of qualified immunity to the defendants. At the time of the original investigation, it was clearly established that bad faith destruction of exculpatory evidence, which was alleged, would violate a suspect's due process rights. A reasonable prosecutor could not have believed that evidence could legally be destroyed or lost to avoid disclosing it. Armstrong v. Daily, #13-3482, 2015 U.S. App. Lexis 7761 (7th Cir.).

After 13 years, a man's conviction for the murder of his ex-girlfriend was overturned, based on a finding that his due process rights were violated by a failure to disclose material exculpatory information about a viable alternative suspect. He sued the officers and prosecutors involved in the case, arguing that they deliberately conspired to suppress the exculpatory evidence. After several defendants were dismissed, an appeals court upheld summary judgment for the remaining defendants, three officers and the town. The plaintiff failed to submit sufficient evidence from which a reasonable jury could find a conspiracy to exist to conceal the exculpatory evidence. It was also not clearly established in Illinois in 1995 that a polygraph exam taken by an alternative suspect, which would have been inadmissible in court, qualified as Brady material. Beaman v. Warner, #14-1195, 2015 U.S. App. Lexis 527 (7th Cir.).

A detainee, who is now deceased, was held pending trial for approximately two years on charges relating to a series of "demand-note" robberies of small retail businesses. A lawsuit contended that two detectives investigating the crimes failed to disclose that someone else had confessed to the robberies or that the robbery spree continued against the detainee was in custody. The charges against him were ultimately dismissed when his defense lawyer did obtain the information. A federal appeals court ruled that the decedent was entitled to constitutional protection against prolonged detention resulting from police withholding information strongly indicative of his innocence from prosecutors. A jury determination that the detectives withheld the information with deliberate indifference or reckless disregard for the decedent's rights met the standard for a violation of due process. The jury verdict of $106,000 on compensatory damages was upheld, along with an award of attorney's fees and cost. Tatum v. Moody, #10-55970, 2014 U.S. App. Lexis17942 (9th Cir.).
A man who spent 20 years on death row for a murder conviction was granted release because the prosecutor had violated his obligations to disclose exculpatory evidence. During an attempted re-prosecution, the failure to disclose exculpatory evidence continued, and the prosecutor failed to alert either the defense or the court that the key prosecution witness had died. The court barred the state from further prosecution efforts based on extraordinary circumstances. The state conviction was never vacated, but the man’s release was granted by habeas corpus relief. A federal appeals court held that the prosecutors had absolute prosecutorial immunity from civil liability for failing to disclose exculpatory evidence. It further ruled that the complaint’s allegations were insufficient to establish that there was an official county policy of violating the constitutional rights of criminal defendants. A police detective had no obligation to make disclosures to the defense, and there was no claim that he withheld any information from the prosecution. D’Ambrosio v. Marino, #13-3118, 2014 U.S. App. Lexis 5588, 2014 Fed App. 55P (6th Cir.).

The plaintiff, who had pled guilty to criminal charges, filed a federal civil rights lawsuit claiming that he had improperly been denied access to exculpatory evidence that had a reasonable probability of affecting the outcome of his trial. A federal appeals court, ruling en banc, vacated summary judgment for the defendants. The court found that the guilty plea did not bar his claim concerning the withholding of evidence since his claim did not necessarily imply that his guilty plea was invalid. Additionally, he had successfully brought a state collateral attack on his conviction for second degree murder based on the withholding of evidence and then pled guilty to a lesser charge of attempted robbery, resulting in his release for time served. Poventud v. City of New York, #12-1011, 2014 U.S. App. Lexis 864 (en banc 2nd Cir.). The en banc court declined to reach the issue, decided by a appeals court panel, as to whether the claim was not barred because of the fact that the plaintiff could no longer bring a habeas corpus action since he was no longer in custody. Poventud v. City of New York, #12-1011, 715 F.3d 57 (2nd Cir. 2013).

Two men convicted of murder had their convictions vacated and all charges against them dismissed after the key witness against them recanted his testimony. The trial court in a lawsuit against a number of defendants failed to properly instruct the jury about the level of culpability sufficient for a showing of deliberate fabrication of evidence under the Fourteenth Amendment. As the error was not harmless, the appeals court reversed a jury verdict for the defendants and ordered a new trial. Given the evidence presented, a reasonable jury could have concluded that the defendants used investigative techniques that were “so coercive and abusive” that they should have known that they would produce false information. At the retrial, the trial court should also determine whether an instruction was appropriate for failure to disclose exculpatory evidence, and explain its ruling. Gantt v. City of Los Angeles, #11-55000, (9th Cir.).

An arrestee convicted of second degree murder was allowed to then plead guilty to a lesser charge and receive a one year sentence, resulting in his release with credit for time already served. He sued the officials who had conducted the original investigation and prosecution,
claiming that they had failed to disclose exculpatory evidence. The trial court ruled that this claim was barred since the plaintiff's conviction and sentence had not been overturned or otherwise set aside. A federal appeals court, noting that the plaintiff could no longer bring a habeas corpus action since he was no longer in custody, found that, under these circumstances his federal civil rights claim was not barred. Poventud v. City of New York, #12-1011, 2013 U.S. App. Lexis 7851 (2nd Cir.).

A man who served 14 years of a longer sentence on a murder conviction was granted a new trial and released from prison on the basis of his claim that the service officers, including a police detective involved in his prosecution, had withheld exculpatory evidence. He then sued the former detective, as well as a police commissioner, two officers and the city for violating his due process rights by withholding the evidence. While a first trial of the case resulted in a deadlocked jury, on retrial, a jury awarded $14 million to the plaintiff based on a finding that the detective had withheld the evidence. A federal appeals court has ordered yet another new trial, based on errors in the trial judge's instructions to the jury on the issue of causation. The jury should have been instructed that liability could only be found if there was a showing by a preponderance of evidence, that, but for the withholding of the exculpatory evidence, the conviction would not have occurred. It did reject, however, the detective's arguments that the evidence withheld was not material or that he was entitled to qualified immunity. Drumgold v. Callahan, #11-1304, 2013 U.S. App. Lexis 2301 (1st Cir.).

A federal jury in Chicago returned a verdict in favor of a plaintiff and against the city on a claim that the city had a persistent widespread custom or practice of protecting officers from citizen complaints. The suit had been brought by a female bartender who had been assaulted by an off-duty officer. A persistent widespread custom or practice had been alleged to constitute a de facto policy of concealing or suppressing investigations into police officer misconduct, along with a “code of silence” within the police department. The jury also found that the officer conspired with others under color of law in violation of the plaintiff’s First Amendment rights to free speech. It awarded $850,000 in damages. Obrycka v. City of Chicago, #07 C 2372, U.S. Dist. Court (N.D. Ill. November 13, 2012). The court subsequently denied a motion to vacate the judgment concerning the “code of silence.” The court found that the “judgment’s precedential value weighs against granting the parties’ motion to vacate the judgment.” Obrycka v. City of Chicago, #07 C 2372, 2012 U.S. Dist. Lexis 179990 (N.D. Ill.). The city stated that would pay the plaintiff compensatory damages in the amount of $850,000, plus costs and reasonable attorney’s fees in an amount yet to be determined. The city also stated that it will forego its right to appeal pursuant to the parties’ post judgment settlement. In an earlier decision, the trial judge found that there was evidence that the defendant officer tried to intimidate and threaten the victim from disclosing the videotape of the incident because he knew, that without the tape, there would be no case against him. Obrycka v. City of Chicago, #07 C 2372, 2012 U.S. Dist. Lexis 22818 (N.D. Ill.).

A man exonerated of his rape conviction by DNA evidence after serving 23 years in prison claimed that a police officer involved in the investigation was liable because he allegedly failed
to disclose an incident which may have suggested that another man, who visited the victim's apartment while the officer was there, committed the crime. But no reasonable jury could find that the officer knew, at the time, the exculpatory value of the visit without simply speculating. At worst, the officer acted negligently in failing to identify the actual rapist as a suspect, and this was insufficient to show a reckless investigation. The plaintiff also failed to show that another defendant officer conducted an improperly suggestive lineup. The victim's identification of the plaintiff as her rapist, although mistaken, had significant indicia of reliability to be admitted as evidence at trial. Briscoe v. County of St. Louis, #11–3034, 690 F.3d 1004 (8th Cir. 2012).

Two men imprisoned for 20 years for the murder of a couple in their home were released and exonerated on the basis of multiple allegations that police officers and a prosecutor together conspired to frame them. A federal appeals court ruled that police officers were not entitled to summary judgment on claims that they had both manufactured false evidence and failed to reveal exculpatory evidence. There were disputed factual issues concerning their conduct and the prosecutor's, so the officers were properly denied qualified immunity, and the prosecutor absolute or qualified immunity. Defendant state officers could also potentially be held liable for allegedly trying to quash an investigation of the case. Whitlock v. Brueggemann, #11-1059, 2012 U.S. App. Lexis 10825 (7th Cir.).

A motorist arrested for DUI sought discovery of a videotape made by police of his arrest, for use in his defense. Despite receiving notice of this request, the police destroyed the video a number of hours before a court hearing on his discovery requests, doing so under a department policy mandating the destruction of such videos 30 days after an arrest. The trial court properly imposed sanctions on the prosecution for this, barring the state from introducing testimony relating to what was shown on the video. This did not bar the prosecution, and the officer could still be questioned as to what his observations of the defendant at the scene had been, other than testifying about what the video showed. People v. Kladis, #110920, 2011 IL 110920, 2011 Ill. Lexis 2236, 2011 IL 110920.

A California Highway Patrol officer, as well as the state, was immune from liability on a claim that he negligently lost or destroyed the information needed to identify an individual involved in an accident which injured the plaintiff, interfering with the ability to sue. Governmental immunity is provided by statute when the information is lost in the course of an official investigation. A $99,224.90 award to the plaintiff was therefore reversed on appeal, Strong v. State of California, #B225885, 2011 Cal. App. Lexis 1580, 201 Cal. App. 4th 1439 (2nd Dist.).

A man convicted of murder was released after more than 30 years in prison when he obtained evidence through a freedom of information request showing that witnesses in his trial had initially given different accounts to police detectives than those they testified to in court. He sued the police for alleged failure to disclose potentially exculpatory evidence to his defense. The officers were entitled to qualified immunity from liability, because in 1972 it was not clearly
established that police officers, in addition to prosecutors, could be liable for failure to disclose potentially exculpatory evidence. His claim against them for alleged "deliberate deception" in intentionally permitting false testimony and concealing evidence, however, could proceed. "Deliberate concealment of material evidence by the police designed to grease the skids for false testimony and encourage wrongful conviction, unarguably implicates a defendant's due process rights." There was also a possible claim against the city for an unconstitutional policy and failure to train on the obligation to disclose exculpatory evidence. Haley v. City of Boston, #10-2064, 2011 U.S. App. Lexis 19223 (1st Cir.).

In an appeal of a criminal conviction for child sexual abuse, the New Jersey Supreme Court has ruled that officers should not destroy notes they take while interviewing witnesses, victims, and suspects, and that such notes should be made available to defense attorneys so that they can use them to challenge police reports and testimony. "We need not take much time to state, once more, that law enforcement officers may not destroy contemporaneous notes of interviews and observations at the scene of a crime after producing their final reports," the court stated.

"Logically, because an officer's notes may be of aid to the defense, the time has come to join other states that require the imposition of 'an appropriate sanction' whenever an officer's written notes are not preserved." The court held, however, that the trial court did not err in failing to instruct the jury in the immediate case that it could draw a negative inference based on the police losing or destroying their notes after interviews, since the accused never asked for such an instruction to the jury and did not raise the issue before his motion for a new trial. State v. W.B., #A-80, 2011 N.J. Lexis 568.

The U.S. Supreme Court, in a 5-4 ruling, overturned a $14 million jury award to an innocent man who spent 14 years on death row before being exonerated. The plaintiff had sued the prosecutors' officer, claiming that its failure to adequately train staff members concerning the obligation not to hide a blood test that would have established his innocence caused his conviction. While the failure to train on the obligation to disclose potentially exculpatory evidence can be the basis for government liability for violation of civil rights, the plaintiff must show that this reflected a deliberate indifference to the rights of the accused, which normally requires a showing of a pattern of similar constitutional violations by untrained employees. Connick v. Thompson, #09-571, 2011 U.S. Lexis 2594.

A man arrested and prosecuted for arson sued a police sergeant for allegedly failing to disclose purportedly materially exculpatory evidence, including a false identification by a witness stating that the accused was "gloating" at the arson scene in the months following the crime. The court ruled that even if the officer falsified and omitted the evidence in question when applying for the warrant, the corrected report and warrant application absent this evidence would still have had facts sufficient to provide probable cause for the arrest. Smith v. Almada, #09-55334, 2011 U.S. App. Lexis 5692 (9th Cir.).
The operator of a day care facility was prosecuted for felony child abuse after a baby there died of a brain hemorrhage and a hospital doctor stated that the child died from being shaken in day care. The doctor failed to reveal before taking the stand in court that there was a pathology report showing that the shaking occurred before the baby arrived at the day care facility. The exonerated day care operator filed a federal civil rights lawsuit against the state director of child services for failure to enforce policies to ensure that doctors disclose exculpatory evidence to prosecutors. A federal appeals court, however, ruled that it was not clearly established that a child services agency had a constitutional duty in these circumstances to discover or train others to disclose exculpatory evidence in child abuse cases. Tiscareno v. Anderson, #09-4238, 2011 U.S. App. Lexis 4977 (10th Cir.).

A man who founded a company that sold memberships in an investment club to African Americans was investigated by the F.B.I. and S.E.C. and convicted of mail fraud and money laundering. His attempts to appeal the conviction or otherwise have it set aside were unsuccessful, but he sued several attorneys and an accountant employed by the S.E.C. who allegedly created a spreadsheet for the criminal prosecution tracking his companies' financial transactions, but refused to disclose it to him or the prosecution in violation of Brady v. Maryland, #490, 373 U.S. 83 (1963). Rejecting this claim, a federal appeals court noted that a "meritorious Brady claim, by definition, implies the invalidity of the attendant criminal conviction." The plaintiff failed to show how the disclosure of the spreadsheet would have led to a different result in his criminal prosecution. Additionally, the information supposedly withheld was "known by and available" to the plaintiff, and the government has no duty to furnish a criminal defendant with information he already has or can obtain himself with any reasonable diligence. Dukes v. Pappas, #10-3380, 2010 U.S. App. Lexis 26371 (Unpub. 3rd Cir.).

A man was at the scene where a group of people beat a victim to death, and he and three other people were arrested for the murder. He was acquitted at trial, and subsequently claimed that investigating officers had withheld evidence of an exculpatory statement made by the eyewitness who purportedly identified him during a lineup. The plaintiff's claim for violation of the duty to disclose exculpatory evidence was rejected, a federal appeals court ruled, because even if the witness had not told the police that he saw the plaintiff participate in the beating, there would have still been enough evidence for the prosecutor to go after the plaintiff under an "accountability" theory of murder under Illinois state law. Mosley v. City of Chicago, #09-3598, 2010 U.S. App. Lexis 15616 (7th Cir.).

A man was arrested, prosecuted, and convicted of having raped and murdered his mother-in-law, and raped and assaulted his six-year old niece. He was sentenced to life without patrol and exonerated when DNA evidence showed that his neighbor had actually committed the crime. Officers were not entitled to qualified immunity on the plaintiff's claim that they failed to disclose to his defense exculpatory evidence contained in a memorandum written by an officer who arrested the neighbor, while he was intoxicated, on unrelated charges, only to have the
A man was prosecuted by the U.S. government for conspiring to provide material support or resources to terrorists and related charges. He sued, claiming that the prosecutor had maliciously and intentionally withheld and failed to disclose exculpatory evidence. Finding that these claims only related to the nondisclosure in connection with the prosecution, and not with the underlying investigation, a federal appeals court held that the prosecutor was entitled to absolute immunity from liability. Koubriti v. Convertino, #09-1016, 2010 U.S. App. Lexis 2283 (6th Cir.).

The U.S. Supreme Court has granted review in a case in which a federal appeals court upheld an award of $14 million in damages and approximately $1 million in attorneys’ fees to a former death-row inmate whose murder and robbery convictions were overturned. Prosecutors in the case were found to have improperly withheld blood evidence that was exculpatory during the plaintiff's trial. The appeals court found that the plaintiff showed that training about the obligation to disclose exculpatory evidence was obviously necessary, and that it was predictable that failing to provide such training could result in violating the constitutional rights of defendants in criminal proceedings. The plaintiff was not required to show that a pattern of similar violations took place. The fact that an assistant district attorney violated the district attorney’s policy in intentionally hiding the blood evidence did not establish that the district attorney was not deliberately indifferent in failing to provide the required training. Thompson v. Connick, #07-30443, 578 F.3d 293 (5th Cir.2009), cert. granted sub nom., Connick v. Thompson, #09-571, 2010 U.S. Lexis 2612.

A man was convicted of a murder and jailed for ten years. Ultimately, he was exonerated based on post-trial DNA testing carried out by the district attorneys’ office. He sued, contending that his rights were violated by a 72-day delay in informing him or his lawyer of the exculpatory results. A federal appeals court ruled that prosecutors were entitled to absolute immunity from liability because their actions were integrally connected to their role as advocates for the state in post-conviction proceedings. An order denying the defendant county's motion to dismiss was not immediately appealable. Warney v. Monroe County, #08-0947, 2009 U.S. App. Lexis 24914 (2nd Cir.).

A man served 34 years in prison on a conviction for murdering his sister-in-law's boyfriend. At his trial, his wife and sister-in-law testified that they saw him outside the apartment of the victim on the day before the murder. He was never exonerated of the murder, but was released from custody by a state court after the existence of an exculpatory police report was revealed. The report indicated that the wife and sister-in-law had not reported his presence outside the victim's residence in their statements to the police. The plaintiff claimed that officers had violated his rights to due process and a fair trial in failing to disclose this exculpatory report. A federal trial court held that the officers were entitled to qualified immunity because his right to
the disclosure of the prior inconsistent statements was not clearly established at the time of his trial. Haley v. City of Boston, #09-10197, 2009 U.S. Dist. Lexis 121565 (D. Mass.).

A man's conviction for the abduction and sexual assault of a woman was overturned after new evidence was revealed and a key witness recanted her testimony. On retrial, the accused was found not guilty, and released, having served twelve years in prison. The accused then sued a police detective, a forensic consultant, and his alleged victim. A federal appeals court ruled that the statements of a potential witness who had not testified at the original trial should have been disclosed to the defense because they called into question, if not entirely discredited, the crime victim's identification of the plaintiff as one of her attackers, so that summary judgment was reversed on claims arising from the alleged failure to disclose exculpatory evidence. Claims against the detective for perjury, however, were barred by absolute witness immunity, since they were based on his trial testimony, instead of his role as complaining witness. Moldowan v. City of Warren, #07-2115/2116/2117, 2009 U.S. App. Lexis 17988 (6th Cir.), amended by Moldowan v. City of Warren, 2009 U.S. App. Lexis 18562 (6th Cir.).

Despite the fact that police had obtained DNA evidence from a bite mark on a corpse excluding him as the person responsible for a murder of an old woman, he was arrested for the crime, and spent forty-two days in jail with charges pending. In a lawsuit claiming that his incarceration was the result of a state trooper's withholding of the DNA evidence, the plaintiff was awarded $400,000 in damages. A federal appeals court has upheld these damages as supported by the evidence, as well as the trial court's reduction of requested attorneys' fees from $292,463 to $118,882.50 to reflect the plaintiff's lack of success on some claims. Burke v. McDonald, #07-2691, 2009 U.S. App. Lexis 15784 (1st Cir.).

Almost thirty years after four men were convicted of involvement in an organized crime "gangland slaying," the F.B.I. disclosed, for the first time, that it had all along possessed reliable intelligence undercutting the testimony of a cooperating witness whose version of the murder was the basis of the convictions, but had suppressed this information. All four convictions were vacated, but by then, two of the men had died in prison, the third had been paroled, and only the fourth was still incarcerated. The two surviving men, along with the estates of the two decedents, sued the U.S. government under the Federal Tort Claims Act (FTCA), 28 U.S.C. Secs. 1346(b), 2671-2680. After a bench trial, the court found the government liable, awarding over $100 million in damages. A federal appeals court, while commenting that the damage awards were "considerably higher than any one of us, if sitting on the trial court bench, would have ordered," nevertheless upheld the awards, finding that they were not "so grossly disproportionate to the harm sustained as to either shock our collective conscience or raise the specter of a miscarriage of justice." There was no liability for malicious prosecution, the court held, as the U.S. government had not initiated the murder prosecution of the four men by the state of Massachusetts, but liability was found on the basis of a state law claim for intentional infliction of emotional distress, applicable to the U.S. government through the FTCA. Limone v. U.S., #08-1327, 2009 U.S. App. Lexis 19239 (1st Cir.).
Police officers were not entitled to summary judgment in a lawsuit claiming that they denied the plaintiff his constitutional rights by concealing allegedly exculpatory evidence. The plaintiff spent over 17 years incarcerated for a double homicide that he insists he did not commit, and he claims that Illinois state police officers, from the beginning, knowingly possessed and concealed evidence of his innocence and never disclosed this evidence to him, throughout his trial, his appeals, and most of his post-conviction proceedings. He was finally released in 2004 after a federal court concluded that "acquittal was reasonably probable if the jury had heard all of the evidence." The lawsuit further claims that Illinois state police officials who were not involved in the case at the beginning learned about the existing exculpatory evidence and that the state had possessed this evidence all along, but that, rather than advise a state appeals court that the state had prosecuted the wrong man, they "kept mum and took steps actively to conceal the exculpatory evidence." Qualified immunity, the federal appeals court ruled, was not available to the defendants because the due process right of a defendant to be told about exculpatory evidence is clearly established in Brady v. Maryland, 373 U.S. 83 (1963) and the cases which follow it. Steidl v. Fermon, No. 06-2017 2007 U.S. App. Lexis 16996 (7th Cir.).

When the city allegedly violated a court order requiring the preservation of a motor vehicle that caught fire, instead destroying it and selling it for scrap, the occupants of the vehicle, injured in the fire, had an arguable claim for spoliation of evidence against the city, since this interfered with their possible products liability lawsuit concerning the vehicle. This was a valid claim even if the city acted unintentionally and negligently, when the city had notice of the court order. Ortega v. City of New York, #22913/2004, 809 N.Y.S.2d 884 (N.Y. Sup. Kings County 2006). [N/R]

State trooper did not violate the First Amendment right of access to the courts of a vandalism victim by handling evidence with his bare hands and thereby making it useless for fingerprint analysis when there was no indication that he acted maliciously or deliberately. Additionally, trooper was acting in an objectively reasonable manner as the scattered firecrackers and CO2 canisters that he handled had been exposed to weather and were lying in snow and mud, and therefore were of "little value" for fingerprint analysis. Kampfer v. Vonderheide, 216 F. Supp. 2d 4 (N.D.N.Y. 2002). [N/R]

Alaska Supreme Court recognizes claims for damages for spoliation of evidence by third parties. Claim by injured motorcyclists that state trooper intentionally removed driver of the truck which hit them from the scene of the accident in order to prevent him being tested for marijuana use stated a claim for interference with their right to pursue a lawsuit against the driver. Hibbits v. Sides, No. S-9630, 34 P.3d 327 (Alaska 2001). [2002 LR Mar]

321:139 Officers were entitled to qualified immunity from homeowners lawsuit for losing all physical evidence relating to theft of $96,000 from an ice chest buried under their home. Harrell v. Cook, #97-3404, 169 F.3d 428 (7th Cir. 1999). 304:56 Homeowners could sue city and
officers for losing all physical evidence relating to theft of $96,000 from an ice chest buried under their home, including the ice chest; claim stated for denial of access to courts to file civil lawsuit to recover stolen money from alleged thief. Harrell v. City of Jacksonville, 976 F.Supp. 777 (C.D. Ill. 1997).

307:106 City to pay $152,000 settlement for alleged negligent loss of aspirin bottle confiscated by police during investigation of death of two-year-old boy from aspirin overdose; lawsuit by boy's parents asserted that they could not succeed in their lawsuit against aspirin manufacturer for alleged defective bottle cap when bottle was not available as evidence. Solis v. Los Angeles Police Department, BC160875, Superior Court, Los Angeles, Cal., reported in Vol. 111 Los Ang. Daily Jour. No. 51, p. 1 (March 17, 1998).

311:169 Claim that officers engaged in a "cover-up" of traffic accident in which vehicle driven by police officer's wife struck and killed a bicyclist stated federal civil rights claim for violation of right of access to the courts; lawsuit asserted that officers failed to preserve physical evidence and deliberately failed to subject motorist to alcohol testing. Delew v. Wagner, 143 F.3d 1219 (9th Cir. 1998).

Editor's Note: " See also Swekel v. City of River Rouge, 119 F.3d 1259 (6th Cir. 1997), cert. denied, 118 S.Ct. 690 (1998), (Constitution guarantees plaintiffs the right of meaningful access to the courts, the denial of which is established where a party engages in pre-filing actions which effectively covers-up evidence and actually renders any state court remedies ineffective).

DUI suspect had no right to be videotaped; failure of officer to turn on volume on videotape machine did not violate due process. State of Montana v. Heth, 750 P.2d 103 (Mont 1988).

Destruction of evidence by police officials and alleged failure to conduct adequate investigation of man's death could be the basis for a federal civil rights suit by his children for interference with their ability to bring a wrongful death lawsuit over their father's death Stump v. Gates, 777 F.Supp. 808 (D.Colo 1991)