existed and that nothing in the record indicated that the officials' decision was abusive or arbitrary, granted summary judgment in favor of the defendants. The Clarkes appealed.

The U.S. Court of Appeals for the Second Circuit affirmed. Although the Fourteenth Amendment prohibited a state from "depriv[ing] any person of life, liberty, or property without due process of law," the U.S. Supreme Court has held that, in emergency situations, a state could satisfy the requirements of procedural due process merely by making available "some meaningful means by which to assess the propriety of the State's actions at some time after the initial taking." *Parratt v. Taylor*, 451 U.S. 527 (1981). Second Circuit precedent also provided that "[t]he law should not discourage officials from taking prompt action to insure the public safety." *Catanzaro v. Weiden*, 188 F.3d 56 (2d Cir. 1999). In this case, the hotel's proximity to a public road created a danger that debris, falling from the burned building, would threaten individuals using public roads. In such a situation, "no reasonable trier of fact could conclude that the Village officials' decision to take emergency action was arbitrary or abusive;" and any "hindsight analysis of a municipality's means of dealing with an emergency would encourage delay and risk increasing the public's exposure to dangerous conditions." Because there was no violation of the plaintiffs' due process rights, the judgment of the district court was affirmed. *WWBITV, Inc. v. Village of Rouses Point*, 589 F. 3d 46 (2d Cir. 2009).

Due Process and Inspections

An ordinance of Calumet City, Illinois, prohibited home sales unless a home inspection was first done to determine compliance with the City's building code. It required a property owner to notify the government of a proposed sale of property. The City had 28 days after receiving such a notice to conduct a compliance inspection, and had to notify the owner prior to the inspection. If the owner objected, the City had ten days in which to obtain a warrant, one limited to authorizing an inspection for compliance with the building code. The plaintiff homeowners brought suit, claiming that their due process rights under the Fourteenth Amendment were violated and challenging the constitutionality of the ordinance "on its face." The lower court dismissed the suit for failure to state a claim, and they appealed.

The U.S. Court of Appeals for the Seventh Circuit affirmed. Insofar as the due process clause of the Fourteenth Amendment applied to the case, it prohibited a state or local government from depriving a person of property without due process of law. "No court thinks, however, that this means the state can't regulate property—can't, for example, enact building codes and zoning regulations even though such measures limit the property owner's right to do what he wants with his property." Further, such "point of sale" ordinances were common and had withstood constitutional challenge, particularly where, if the owner objected, the ordinance required city inspectors to obtain a warrant to carry out the inspection. The ordinance here contained such a requirement. This ordinance, the court stated, could not "be thought irrational." Without building codes, "more buildings would catch fire, collapse, become unsightly, attract squatters, or cause environmental damage and by doing any of these things reduce the value of other buildings in the neighborhood." Accordingly, the court affirmed the district court's decision. *Mann v. Calumet City, Illinois*, 588 F. 3d 949 (7th Cir. 2009).

Due Process and Access to Treatment

Officer Ruth was called to a scene and found McCargo running up and down the street, hallucinating and behaving strangely. He said he had smoked crack cocaine. Ruth arrested McCargo for public intoxication, and EMTs were called. They examined McCargo and decided he did not require hospitalization. Instead, Ruth took McCargo to the local jail, where the nurse also examined him. Testimony differed as to whether Ruth told the jail officers that McCargo admitted he had smoked crack cocaine. Because McCargo continued to act in an uncontrollable manner, he was placed in a restraint chair "for his own safety," and was even tased by jail officers in order to "relax his muscles." After spending over three hours in the chair, McCargo was released. He began shaking and spitting up blood, and lost consciousness. He was rushed to a hospital, where he was diagnosed with respiratory and cardiac failure resulting from cocaine use. He never recovered and died after eleven months in a coma. McCargo's family alleged that Officer Ruth acted with deliberate indifference when he failed to inform the EMTs and the jail staff that McCargo stated he had ingested cocaine, and had violated his constitutional right to receive medical care. Two conflicting police department policies regarding the transportation of individuals for medical services existed. One policy instructed police who encountered detainees exhibiting signs of "excited delirium" to transport them to a hospital for treatment, but made no provision to allow officers to engage the services of an EMS vehicle instead. However, the police chief's concurrent written directive prohibited officers from transporting any individual to the hospital in a police vehicle for medical services.

The district court granted summary judgment for the defendants on all grounds except Ruth's request for summary judgment based on qualified immunity on the charge of violating McCargo's Fourteenth Amendment right to adequate medical care; and second, the City's request for summary judgment on the plaintiffs' theory as to the police chief's "no transport" policy. Ruth and the City sought interlocutory review of these rulings.

The U.S. Court of Appeals for the Sixth Circuit reversed, finding that the record as a whole did "not support the inference that a reasonable trier-of-fact could find a causal connection between either Officer Ruth's actions or [the police chief's] no-transport policy and McCargo's injuries."

Although pre-trial detainees had a right under the Fourteenth Amendment to adequate medical treatment, a claim under 42 U.S.C. § 1983 alleging a failure

continued on page 34

CASES *cont'd from page 33*

to provide adequate medical treatment required a showing that the defendants acted with deliberate indifference to the serious medical needs of the detainee. In this case, both the EMTs and the jail nurse, "who presumably had a greater facility than the average layperson to recognize" an individual's medical needs, had concluded that McCargo did not need hospitalization. As McCargo's condition was not obvious to these medically-trained employees, it certainly would not have been obvious to a layperson or to Officer Ruth. As a result, the plaintiffs failed to establish the obvious existence of a sufficiently serious medical need. The plaintiffs were also required to show that the defendant officer was "aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed]," had drawn that inference, and disregarded the risk. Officer Ruth's actions did not rise to this level: while he may have failed to mention that McCargo had used cocaine, he was also entitled to rely on the EMTs' and nurse's medical assessments. Even had a constitutional violation occurred, the court found the plaintiffs failed to show that the policy prohibiting officers from transporting individuals to the hospital in a police vehicle for medical services caused McCargo's injuries. "At most, the evidence shows that Officer Ruth was reluctant to transport McCargo to the hospital. However, this reluctance could have sprung from any number of motivations, including the possibility that Officer Ruth, relying on the EMTs' assessment, did not believe that McCargo needed to go to the hospital for treatment." *Spears v. Ruth*, 589 F. 3d 249 (6th Cir. 2009).

First Amendment

School's Distribution Policy

The Plano, Texas Independent School District enacted a policy in 2005 that restricted the distribution of written materials, including those religious in nature, by its students. Students could only distribute such materials 30 minutes before and after school; during three annual parties; at recess; and "passively" at designated tables during school hours. All other distribution was prohibited. The preamble to the policy stated, in part, that the policy was "intended to decrease distractions, to decrease disruption, to increase the time available and dedicated to learning, and to improve the educational process, environment, safety and order at District schools and not invade or collide with the rights of others." The plaintiffs, four students and their families, brought suit, claiming that the policy was facially invalid under the First Amendment. The district court disagreed, finding that the policy was facially valid under *United States v. O'Brien*, 391 U.S. 367 (1968), being content- and viewpoint-neutral, narrowly tailored to achieve the significant governmental interest of improving the educational process, and leaving open ample alternative channels of communication. The plaintiffs appealed, arguing that the *O'Brien* standard only applied to expressive conduct and not to "pure speech," like distributing written materials, and that the "substantial disruption" test in *Tinker v. Des Moines Ind. Sch. Dist.*, 393 U.S. 503 (1969), applied to "pure speech."

The U.S. Court of Appeals for the Fifth Circuit affirmed with respect to the 2005 policy (but remanded claims regarding an earlier policy). "We have made plain that 'time, place, and manner' is the proper standard for evaluating content and viewpoint regulations of student speech." Pursuant to *U.S. v. O'Brien*, in order to have a valid time, place, and manner restriction, a regulation had to be content-and viewpoint-neutral, and be "narrowly tailored to serve a significant government interest, and … leave open ample alternative channels for communication of the information." The "regulation of speech during and immediately before the classroom instructional period [was] intended to facilitate the beginning of class without a wait for the distribution of [classroom] materials." The court found that there were ample alternative channels of communication: students could distribute religious materials before and after school, during recess, and even during school hours at designated tables. *Morgan v. Plano Indep. Sch. Dist.*, 589 F. 3d 740 (5th Cir. 2009).

Personnel and Employment

Age and Political Affiliation

Smith was the Superintendent of the City of Allentown Recreation Bureau. He had been appointed to that post in 2000 by the then mayor, a Republican. In 2001, a Democrat was elected as the new mayor. Smith continued to serve in his position, although some performance issues were raised by Pawlowski, his manager at the time. In 2004, a new manager was appointed and developed a performance plan for Smith. In early 2005, Pawlowski, a Democrat, announced his candidacy for mayor. Smith, a registered member of the Republican party, supported the Republican candidate (who was also the former mayor who had appointed him initially) and placed his election sign in his yard. Smith claimed that a campaign worker for Pawlowski told him that Pawlowski "viewed [Smith] as a political enemy[ ] of sorts" and believed that Smith had improperly attempted to influence two members of the City's recreation commission to support the Republican candidate's bid for mayor. The campaign worker recalled the conversation differently. In any event, Pawlowski was elected and appointed a new manager. That manager reviewed Smith's file, concluded that Smith had failed to achieve any of the goals set forth in the 2004 performance plan, and recommended that he be fired. The City Solicitor and the HR director both recommended against this (the City had a progressive discipline policy). Smith, who was 55 years old at the time, was told he lacked the skills necessary to perform his duties effectively, and that he was being given the option of resigning or retiring. Smith resigned. His replacement was 36 years old. Smith sued, claiming the City discriminated against him on the basis of his age in violation of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621-34, and on the basis of his political affiliation, in violation of his First Amendment rights.

On the age discrimination claim, the district court held that Smith failed to adduce evidence from which a reasonable jury could conclude that the defendants' proffered rationale for terminating him was a pretext for