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Challenging the Conditions of Prisons and Jails

A Report on Section 1983 Litigation

Discussion Paper

Challenging the Conditions of Prisons and Jails

A Report on Section 1983 Litigation

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Highlights

Incarceration is intended to punish individuals for violating criminal laws. Punishment might be severe with lengthy sentences in harsh surroundings. However, the U.S. Supreme Court has interpreted Section 1983 of the U.S. Code to permit prisoners to sue state correctional officials when the conditions of confinement fail to meet constitutional standards of physical security, adequate medical treatment, freedom of religious expression, and so forth.

Section 1983 litigation is a major portion of the U.S. District Courts' civil caseloads. One in every ten civil lawsuits is a Section 1983 lawsuit. Observers have conflicting opinions about the nature of the lawsuits, how the federal courts process them, and the manner in which they are resolved. One perspective is that the lawsuits are frivolous and do not warrant the scarce resources of federal courts. Another perspective is that some lawsuits have merit, but the federal courts tend to treat all Section 1983 lawsuits in an assembly-line fashion with little or no individual attention. Yet, despite different opinions about this substantial body of litigation, there is very little systematic data on which to draw conclusions and to inform policy recommendations.

This profile of Section 1983 lawsuits was developed from an examination of more than 2,700 cases disposed of in 1992 in nine states (Alabama, California, Florida, Indiana, Louisiana, Missouri, New York, Pennsylvania, and Texas). Findings from the inquiry suggest that it is useful to view Section 1983 litigation as comprised of three distinctive gradations of lawsuits.

The first gradation consists of cases dismissed by the courts in six months or fewer because the issues raised in the lawsuits

lack an adequate basis in law or fact. The second gradation includes cases surviving from six to twelve months as the proportion of issues dismissed by the court decreases and the incidence of stipulated dismissals and successful motions by defendants to dismiss increase. Cases in this gradation involve the same types of issues as in the first stage with the exception that issues challenging convictions and sentences decrease and other issues, such as inadequate medical treatment, lack of due process, and denial of access to the courts, increase in relative number.

The final gradation consists of cases that take up to two years or more to be resolved, because the issues involved are much more likely to have appointed counsel and the holding of evidentiary hearings. The composition of the issues also changes appreciably. Courts confront a docket where the issues of physical security, including protection against excessive force by correctional officers and protection from violence by other inmates, become more frequent. Finally, for cases in this gradation, the prospect of successful prisoner litigation emerges with both settlements and verdicts resulting in financial awards to prisoners.

Two policy implications flow from the evidence concerning case gradations. For the cases that lack an adequate basis in law or fact, they should be resolved through state administrative grievance procedures instead of through litigation in the federal courts. Under the Civil Rights of Institutionalized Persons Act of 1980, the U.S. Attorney General and the federal courts can certify grievances procedures and then require their exhaustion as a way of resolving inmate grievances short of litigation. This legislation, which has not been implemented nationwide, deserves the attention of policy makers and judges.

Second, the findings raise the issue of how best to handle the remaining two gradations of cases. What innovative procedures

have the federal courts adopted to resolve the more complex Section 1983 lawsuits? A systematic approach should be taken to determining the most efficient methods of handling Section 1983 cases that cannot be resolved administratively.

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Introduction

Prisoners can file civil lawsuits in federal court and challenge the conditions of their confinement in state prisons and jails.[1] These lawsuits claim that state officials have deprived the prisoners of their constitutional rights, such as adequate medical treatment,[2] protection against excessive force by correctional officers[3] or violence by other inmates,[4] due process in disciplinary hearings,[5] and access to law libraries.[6] If the prisoners win their lawsuits, they may be awarded money damages or other relief. Because these cases are filed under Section 1983 of Title 42 of the U.S. Code, they are commonly called Section 1983 lawsuits.

The volume of Section 1983 litigation is substantial by any standard. In the 1960s when the U.S. Supreme Court established that prisoners had constitutional rights,[7] the number of cases filed was small. The Administrative Office of the U.S.

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[1] Generally speaking, most Section 1983 lawsuits are filed in the federal court system, although state courts do have the authority to resolve them. There are no published figures on the precise number of Section 1983 lawsuits filed in the state courts because virtually all state courts do not keep track of this particular area of litigation in their record-keeping systems in the same way that they keep track of other civil litigation, such as domestic relations, tort, real property, or contract cases. Because it would be extremely arduous to draw a sample of Section 1983 cases from state court case files, the focus of this report is on Section 1983 lawsuits filed in federal courts.

[2] *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

[3] *Hudson v. McMillian*, 112 U.S. 995 (1992).

[4] *Farmer v. Brennan*, 114 U.S. 1970 (1994).

[5] *Wolff v. McDonnell*, 418 U.S. 539 (1974).

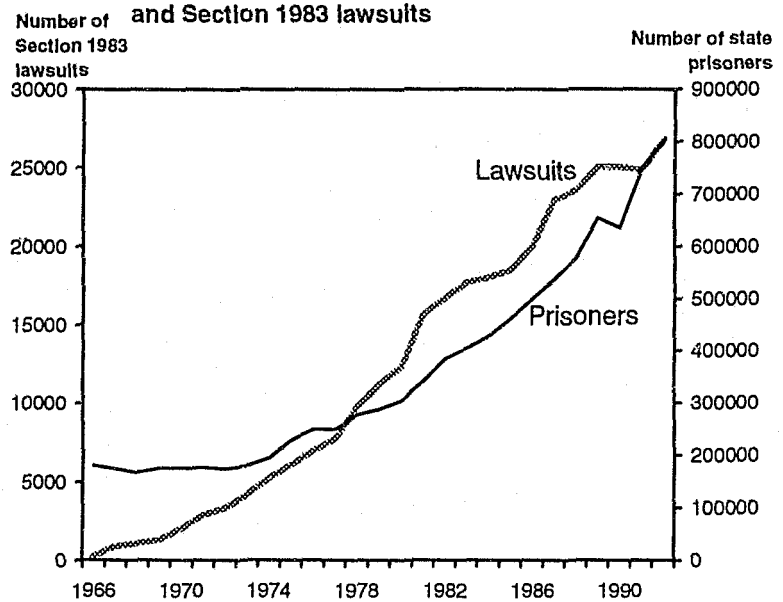
[6] *Bounds v. Smith*, 430 U.S. 817 (1977).

[7] *Cooper v. Pate*, 278 U.S. 546 (1964).

Courts (AO) counted only 218 cases in 1966, the first year that state prisoners' rights cases were recorded as a specific category of litigation. The number climbed to 26,824 by 1992. When compared to the total number of all civil cases filed in the nation's U.S. District (trial) Courts, more than one in every ten civil filings is now a Section 1983 lawsuit. Finally, there is approximately one lawsuit for evpery thirty state prison inmates as the data in Figure 1 show. If the number of state prisoners increases, as is expected in the future, an increase in the volume of Section 1983 lawsuits should also be expected.

The nationwide trend in the volume of Section 1983 litigation over the past twenty years has been remarkably consistent across the individual states. When the annual change has moved upward nationally, virtually each individual state, regardless of geographic region or population size, has experienced growth in the number of lawsuits. Texas consistently has ranked first in the number of Section 1983 lawsuits per state and North Dakota consistently has ranked fiftieth. For the time period from 1970 to 1991, the Kendall Coefficient of Concordance, a statistic which measures the consistency in the rank orderings of states according to each state's relative number of Section 1983 lawsuits from year to year, is .94. Because 1.0 is perfect consistency, .94 is an astoundingly high coefficient and means that there are few instances when states change rank orderings (e.g., the top ranked state becomes the second ranked state and second ranked state becomes the top ranked state). There is even greater consistency (i.e., larger coefficients) over shorter time periods (e.g., 1970 to 1980, 1981 to 1991).

Figure 1
National trends in the number of state prisoners and Section 1983 lawsuits



Certainly there are popular images of prisoner litigation. One image is that lawsuits are filed for entertainment value by prisoners who have a lot of time on their hands and that these lawsuits serve only to crowd other litigation on the federal courts' busy dockets. A contrasting image is that courts ruthlessly dismiss prisoners' complaints to clear their calendars, deny requests by indigent prisoners for appointment of legal counsel, and that prisoners never win, despite the merit in some (and perhaps many) of the cases. In addition to these popular images, there is a serious debate among judges, attorneys, and other experts concerning the necessity and desirability of hearing in the federal court system the many thousands of prisoners' complaints filed annually. On one side of this long-standing debate are former U.S. Supreme Court Chief Justice

Warren E. Burger,[8] the Federal Courts Study Committee,[9] advocates of federalism,[10] and some state correctional officials.[11] They contend that the lawsuits are a waste of scarce resources because their merit is difficult to determine, and once the underlying issue is uncovered, most of the lawsuits resemble matters otherwise handled in a small claims court. Their proposed solution is to transfer these cases to the state courts or to require exhaustion of state administrative remedies by certifying state grievance mechanisms authorized under the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA).[12] Under CRIPA, the U.S. Attorney General and the federal courts are authorized to certify state administrative grievance procedures in prisons and jails. If the procedures are certified as fair and effective, federal courts can require prisoners to use these procedures before filing lawsuits.

The opposite position is taken by former U.S. Supreme Court Associate Justice Harry Blackmun,[13] some federal judges,[14] and advocates of prisoners' rights.[15] They contend that the workload demands are overstated because most Section 1983 cases are disposed of at early stages of litigation. Associate Justice Blackmun argues that because no one knows how many cases are frivolous or meritorious, federal courts must leave their doors open to all state prisoners and not siphon lawsuits off to some other dispute resolution forum. Specifically, he is

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8 Burger (1969, 1976, and 1981).

9 Federal Courts Study Committee (1990).

10 Howard (1980). Baude (1977). Posner (1985).

11 Manson (1983).

12 42 U.S.C. § 1997e.

13 Blackmun (1985).

14 Edwards (1983).

15 Turner (1979).

skeptical of the ability of state courts to be as independent as necessary when prisoners take the state to court.[16]

The problem

Scholarly research on the subject provides little assistance in addressing questions concerning the nature of the thousands of individual prisoner complaints filed each year. Virtually all studies have focused on class-action cases in which jails, prisons, and entire state correctional systems have been found by federal courts to be constitutionally deficient and in need of major institutional reform. These analyses assess whether federal court intervention is successful in improving the structure, organization, and operation of state correctional institutions.[17] However, that research tells us much more about the capacity of federal courts to shape policies governing the operation of correctional institutions than it tells us about the composition of the much larger range of individual Section 1983 cases, how they are resolved, and the outcomes of these cases.

The AO provides an annual accounting of how many Section 1983 cases are filed. The number of cases filed and disposed of in each U.S. District Court and each Circuit of the U.S. Courts of Appeals is available in reports published by the AO. Yet, the aggregate figures compiled each year by the AO do not indicate what issues are raised in the complaints, the extent to which prisoners have legal counsel, the manner by which cases are resolved, the reasons why cases are dismissed, the terms of settlements between prisoners and correctional officials, and the frequency of verdicts in favor of prisoners. There is a statistical void concerning the substance of Section 1983 litigation, the

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[16] Blackmun (1985).

[17] For a review of this growing body of literature, see Feeley and Hanson, 1990.

manner in which cases are resolved, and the outcomes of litigation. Because of this lack of systematic information, there exists no standard or benchmark against which to determine whether either or both of the popular images of Section 1983 cases are true. To help inform this and other debates, there is a critical need to know more about the contours of this substantial and important area of litigation.

What are these lawsuits about? What do they look like in terms of issues raised in the complaints? How are they handled by the courts? How much time is taken to resolve them? Do prisoners hire attorneys or are attorneys appointed by the courts? Are prisoners ever successful in obtaining awards? If so, what kind of victories do they achieve? Finally, are all lawsuits alike or do they vary in systematic ways?

Research design

To increase understanding of what happens when prisoners sue correctional officials, the National Center for State Courts (NCSC), with support from the Bureau of Justice Statistics, undertook a study of Section 1983 cases disposed of in 1992 by U.S. District Courts located in different states (Alabama, California, Florida, Indiana, Louisiana, Missouri, New York, Pennsylvania, and Texas). These states have nearly 50 percent of the nation's Section 1983 litigation. Moreover, as shown in Table 1, they are representative of the full range of litigation rates across the county. They represent seven different Circuits of U.S. Courts of Appeals, including the Second, Third, Fifth, Seventh, Eighth, Ninth, and Eleventh Circuits. Major geographical regions, including the Northeast, Southeast, Midwest, and West, are also captured. For these reasons the aforementioned states were chosen as project sites.

Table 1
The Volume and rate of Section 1983 litigation in 1991

States	Section 1983 lawsuit	State prisoner population	Number of lawsuits per 1,000 prisoners
Iowa	535	4,145	129.071
West Virginia	183	1,502	121.838
Tennessee	1013	11,474	88.287
Missouri	**1357**	**15,897**	**85.362**
Louisiana	**1587**	**20,00?**	**79.338**
Nevada	431	5,503	78.321
Alabama	**1231**	**16,760**	**73.449**
Arkansas	536	7,766	69.019
Delaware	255	3,717	68.604
Nebraska	171	2,495	68.537
Kentucky	625	9,799	63.782
Pennsylvania	**1454**	**23,388**	**62.169**
Wisconsin	432	7,849	55.039
Virginia	1046	19,829	52.751
Utah	119	2,625	45.333
Arizona	688	15,415	44.632
Montana	63	1,478	42.625
Maine	67	1,579	42.432
Mississippi	357	8,904	40.094
New Hampshire	56	1,533	36.530
Kansas	213	5,903	36.083
Indiana	**451**	**13,008**	**34.671**
Washington	316	9,156	34.513
Illinois	991	29,155	33.991
Texas	**1609**	**51,677**	**31.136**
Georgia	730	23,644	30.875
Florida	**1436**	**46,533**	**30.860**
North Carolina	569	18,903	30.101
Hawaii	76	2,700	28.148
Michigan	1021	36,423	28.032
New Mexico	87	3,119	27.894
Colorado	224	8,392	26.692
Maryland	495	19,291	25.660
Oregon	170	6,732	25.253
Idaho	54	2,143	25.198
New Jersey	504	23,483	21.462
New York	**1204**	**57,862**	**20.808**
Vermont	22	1,118	19.678
North Dakota	9	492	18.293
Minnesota	62	3,472	17.857
Oklahoma	234	13,340	17.541
South Dakota	21	1,374	15.284
Wyoming	16	1,099	14.559
California	**1367**	**101,808**	**13.427**
Connecticut	133	10,977	12.116
Alaska	32	2,706	11.826
Ohio	401	35,744	11.219
District of Columbia	108	10,455	10.330
South Carolina	186	18,269	10.181
Massachusetts	71	9,155	7.755
Rhode Island	12	2,771	4.331
Totals	25,030	752,565	

Random samples of cases were selected from lists of closed cases provided by the AO for individual U.S. District Courts in each state. The district courts from which cases were selected include the Middle District of Alabama (Montgomery); the Northern District of California (San Francisco); the Middle and Southern Districts of Florida (Tampa, Orlando, and Miami); the Northern and Southern Districts of Indiana (South Bend and Indianapolis); the Middle and Eastern Districts of Louisiana (Baton Rouge and New Orleans) the Western and Eastern Districts of Missouri (Kansas City and St. Louis); the Eastern and Southern Districts of New York (Brooklyn and Manhattan); the Western and Eastern Districts of Pennsylvania (Pittsburgh and Philadelphia); and the Northern and Southern Districts of Texas (Dallas and Houston). Samples of approximately three hundred cases per state were drawn to permit the drawing of valid inferences. The final sample sizes are as follows: AL-M (291), CA-N (318), FL-M (252), FL-S (6), IN-N (165), IN-S (133), LA-M (131), LA-E (171), MO-W (98), MO-E (201), NY-E (53), NY-S (246), PA-W (102), PA-E (195), TX-N (150), TX-S (226).

A data collection form was developed to gather desired information. One of the major requirements was that the form balance the constitutional standards of Section 1983 and the actual issues raised in the complaints. Using the constitutional standards as a guide, every sampled lawsuit was examined for the areas of prison activity being challenged. The following ten categories of issues proved useful.

(1) Medical treatment (e.g., failure to provide needed back brace, corrective shoes, dentures, or failure to perform necessary surgery).

(2) Physical security (e.g., excessive force by correctional officers, failure to protect against attacks and rapes by other inmates, threats and harassment by correctional

officers, failure to prevent theft of a prisoner's property, unreasonable body cavity searches).

(3) Due process (e.g., improper placement in administrative segregation, improper intra-prison transfer, improper disciplinary hearing, improper classification).

(4) Living conditions (e.g., nutritionally inadequate diet, denial or extreme limitation of exercise, and inadequate clothing).

(5) Physical conditions (e.g., overcrowding, inadequate toilets and showers, excessive noise, inadequate sanitation, failure to protect against exposure to inmates with AIDS, failure to protect against exposure to tobacco smoke).

(6) Denial of religious expression, assembly, and visitation as well as racial discrimination.

(7) Denial of access to courts, law libraries, lawyers, and interference with mail or telephone calls.

(8) Assault and harassment by arresting officer.

(9) Invalid conviction or sentence.

(10) All other types of issues (e.g., denial of parole or trial, appellate attorney refused to correspond with the prisoner).

These ten categories have the virtue of classifying all issues actually raised in complaints without creating an excessively large miscellaneous category. The category of "all other types" is eleven percent of all issues. The ability to classify all of the

other 89 percent of issues into only nine other categories, given the thousands of lawsuits sampled, also suggests the utility of the categories.

The data collection form captures other information on each case, such as the number of issues, type of correctional institution (e.g., jail, prison), defendant's position (correctional officer; medical staff; head of the correctional institution; director of the state corrections department; governor; mayor; county commissioner; arresting officer; and all other individuals, such as the President of the United States, prosecutor, wife, or husband), dates of key events (e.g., filing, evidentiary hearing, settlement conference, trial, disposition), manner of disposition (e.g., court dismissal, dismissal on defendant's motion, stipulated dismissal, trial, other dispositions, such as the plaintiff's motion to dismiss the lawsuit), reasons for dismissals by the court (e.g., issue noncognizable under Section 1983, issue does not rise to constitutional violation, issue has no basis in fact or law, defendant has immunity, defendant is not acting under color of state law, issue is moot because the plaintiff is no longer incarcerated and sought only declaratory relief), appeal status (e.g., not appealed, appeal denied, case remanded, appeal granted, appeal dismissed, appeal pending), and legal representation (e.g., *pro se*, court appointed attorney, privately retained attorney, ACLU or other type of attorney). A copy of the data collection form is available upon request from the project staff at the NCSC.

Summary of findings

The central conclusion to emerge from the nine court study is that there are important gradations in Section 1983 litigation. The lawsuits must meet the requirements of Section 1983 (e.g., sue individuals acting under color of state law) and satisfy procedural requirements (e.g., respond to time deadlines set by

the courts for the filing of documents). Nearly half of the lawsuits fail to meet these basic thresholds and are dismissed by the court within six months of being filed. However, for lawsuits that meet these basic thresholds, the federal courts carefully review the facts and relevant law. The length of time that a case remains on the court's docket depends on the type of issue raised in the lawsuit, whether counsel is appointed to represent the prisoner, and whether the court decides to hold an evidentiary hearing. Issues involving physical security and related matters take longer to be resolved than issues such as religious expression or access to the courts. However, the courts are not simply responding to the type of issue. Courts give more time and attention to particular cases within every type of issue by deciding which ones warrant the appointment of counsel and the holding of evidentiary hearings.

In this study, issues rather than cases are the unit of analysis for several reasons. Judges certainly dispose of cases, but the judges also review the merits of issues. To neglect issues as an explanatory factor would be short-sighted. As a result, issues are of research interest. Do different issues require different lengths of time to be resolved? Are some issues resolved more frequently by court dismissals? Do some issues produce more settlements with some payment to prisoners?

Additionally, cases correspond one to one with issues if all cases have only one issue (e.g., inadequate medical treatment).[18] As

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[18] The number of sampled cases that have complete and interpretable information varies from variable to variable. For example, some lawsuits contained indecipherable issues due to illegible handwriting on the complaint form completed by the prisoner. However, the dates of key events in the case might be available for analysis. Hence, the total number of cases and issues referred to in the tables presented in this report vary somewhat from
(Continued on next page)

shown in Table 2, because one-third of the cases in the study sample have multiple issues that correspondence does not exist in all cases. There is only one way to measure the role of issues and that is to treat them as the unit of analysis (i.e., assign each issue in a case a particular length of processing time, a particular manner of disposition, and so forth). Finally, this methodology also is required because different issues in the same case may be resolved differently (e.g., one issue is dismissed by the court and the prisoner prevails on another issue).

Table 2
Relative frequency of Section 1983 lawsuits with single versus multiple issues

Number of issues in the case n = 4,481	Percentage of cases n = 2,696
1	62%
2	22%
3	10%
4	4%
5	1%
6 or more	1%
	100%

Background

The U.S. Congress passed legislation after the Civil War to protect Southern African-Americans from reprisals during Reconstruction. Among the laws enacted was the Civil Rights

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table to table.

Act (or Ku Klux Klan Act as originally entitled) of 1871. Section 1 of this Act held that officials responsible for such reprisals were liable for damages. This statute, recodified, is now Section 1983 of Title 42 of the U.S. Code.

In the 1960s, the U.S. Supreme Court interpreted Section 1983 as a legal remedy permitting citizens to sue state and local governmental officials when policies, practices, or specific actions fell below constitutional standards.[19] A variety of activities involving police departments, public housing authorities, park and recreational agencies, and county hospitals were viewed by the U.S. Supreme Court as being subject to the following key provision of the Act.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this Section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.[20]

Subsequently, the U.S. Supreme Court extended the Act by deciding that prison and jail inmates could raise claims challenging the conditions of their confinement on the grounds

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[19] For a history of these decisions, see Shuck, 1983.

[20] 42 U.S.C. § 1983.

that the conditions violated their constitutional rights.[21] The Court in a series of decisions spelled out standards to which correctional officials must adhere in a broad range of prison and jail activities. Standards were established to govern medical treatment; physical security and privacy; discipline; living conditions, such as diet, exercise, and visitation; physical conditions; communication; and access to the courts. Within these activities, U.S. Courts of Appeals and U.S. District Courts have rendered many specific applications that elaborate on the U.S. Supreme Court's basic decisions. Thus, there is a substantial body of law to which prisoners can refer in claiming that general policies or specific actions toward them violate their rights.

Determining whether constitutional rights have been violated is neither easy nor obvious. Courts must balance prisoners' constitutional rights against the functional interests of prisons and jails: (1) maintenance of order, (2) maintenance of security, and (3) rehabilitation of inmates. This balancing is done on a case-by-case basis according to whether the facts indicate the restrictions placed on inmates are necessary to preserve these interests. For example, prisoners entering correctional institutions surrender most of their Fourth Amendment protections. Intrusions on privacy which, in the society of free men and women, clearly would violate the ban against "unreasonable searches and seizures," often can be justified in terms of the correctional institution's interest in security and order; and courts generally have been loathe to confer a very extensive right to privacy on inmates.[22] Body searches have

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[21] *Cooper v. Pate* (1964). This landmark case struck down restrictions on African-American Muslim inmates.

[22] *Bell v. Wolfish*, 441 U.S. 520, 557 (1979) (room searches and package inspections are permissible if "reasonable" and made for security reasons).

been more difficult for correctional officials to defend than cell searches, although even a cell search will be found unconstitutional if it is the pretext for damaging or destroying inmate property.[23] On the other hand, body cavity searches have been upheld when they are part of a clear-cut policy demonstrably related to an identifiable legitimate institutional need[24] but not when intentionally humiliating or degrading.[25]

To illustrate the fine balance needed to justify an intrusion on the right to privacy, some courts have ruled that staff members of one sex may not supervise inmates of the opposite sex during bathing, use of the toilet, and strip searches.[26] In these cases, the inconvenience of requiring correctional officials of the same sex as the inmate was held not to constitute a legitimate institutional reason to justify the intrusion. On the other hand, the practice of allowing female correctional officials to "pat

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[23] *Ferranti v. Moran*, 618 F.2d 888 (1st Cir. 1980) (destruction of prisoner's property without legitimate reason states a claim under 42 U.S.C. § 1983). *See Taylor v. Leidig*, 484 F. Supp. 1330 (D. Colo. 1980) (confiscation of prisoner's personal belongings may amount to violation of Fourth and Fifth Amendments); *Thornton v. Redman*, 435 F. Supp. 876 (D. Del. 1977) (prisoners afforded protection against unjustified appropriation of property by officials); *Bonner v. Coughlin*, 517 F.2d 1311, 1317 (7th Cir. 1975) (seizure of transcript during search states a claim under Fourth Amendment).

[24] *Bell v. Wolfish*, 441 U.S. 542, 558-59 (1979); *Smith v. Fairman*, 678 F.2d 52, 54 (7th Cir. 1982), *cert. denied*, 103 S. Ct. 1879 (1983).

[25] *Smith v. Fairman*, 678 F.2d 52, 53 (7th Cir. 1982), *cert. denied*, 103 S. Ct. 1879 (1983). *See also, Lee v. Downs*, 641 F.2d 1117, 1119 (4th Cir. 1981) (when not reasonably necessary, exposure of genitals in presence of other sex may be demeaning and impermissible).

[26] *Lee v. Downs*, 641 F.2d 1117, 1120 (4th Cir. 1981); *Cumby v. Meachum*, 684 F.2d 712 (10th Cir. 1982).

down" male prisoners, excluding the genital area, has been upheld.[27] In that case, the degree of the intrusion was outweighed by the institution's staffing interests. These cases illustrate the difficulty of balancing the degree of the intrusion against the institution's needs and the requirement that correctional officials must respond to each complaint individually.

Findings

Plaintiffs and defendants

Section 1983 lawsuits arise from a particular context. According to the cases sampled, most lawsuits are filed by inmates of state prisons (62%) with the rest from jail inmates (36%) and a few from individuals either paroled or released from a correctional institution (2%). Fewer than one percent are from offenders who are in mental health facilities.

The lawsuits target several groups of individuals as defendants. The largest number of Section 1983 lawsuits name correctional officers of prisons or jails as defendants (26%). The second largest group named is the heads of these institutions, such as wardens, deputy wardens, building directors, or jail administrators (22%). Medical staff, including both doctors and nurses (9%), are the next largest group of defendants followed by elected officials, such as governors, mayors, and judges (7%). Sometimes arresting officers are the defendants (6%). Other types of defendants include clerks of court, court reporters, privately retained and court appointed state trial and appellate counsel, spouses, private business persons, and the President of the United States (29%).

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[27] *Smith v. Fairman*, 678 F.2d 52, 53-54 (7th Cir. 1982), *cert. denied*, 103 S. Ct. 1879 (1983).

Issues, manner of disposition, case processing time, and other characteristics of Section 1983 lawsuits.

The aggregate profile of Section 1983 litigation is that physical security, medical treatment, and due process are the most frequent issues in prisoners' complaints. The overwhelming majority of the issues are disposed of by court dismissals for failure to satisfy the basic requirements of a Section 1983 lawsuit. Virtually all prisoners act as their own attorney (i.e., *pro se*), and evidentiary hearings are seldom held. Data presented in Tables 3, 4, 5 and 6 reveal some interesting patterns.

Table 3
Issues in Section 1983 lawsuits

Types of issues	n	%
Medical treatment	(751)	17%
Physical security	(931)	21%
Due process	(571)	13%
Living conditions	(198)	4%
Physical conditions	(416)	9%
Religious expression	(186)	4%
Access	(324)	7%
Assault by arresting officer	(117)	3%
Challenges to conviction	(540)	12%
All other types of issues	(447)	11%
Totals	4481	100%

Table 3 indicates the most frequently raised issues concern the immediate, physical well being of prisoners. Allegations of inadequate medical treatment (17%), a lack of physical security (21%), or transfer to administrative segregation without due process (13%), are not life-style issues in the sense that living conditions (4%) (e.g., denial of exercise) might be construed.

Physical security, medical treatment, and due process also are more directly related to daily life in prisons and jails, than more apparently abstract issues, such as religious expression (4%) or access to the courts (7%) that do, however, have potentially long-lasting significance. Additionally, a little more than one in ten (12%) issues are habeas corpus issues. These challenges to a prisoner's conviction or sentence are more frequent than challenges to prisoners' living conditions, physical conditions, religious expression, access, or all other types of issues. Habeas corpus issues are almost always dismissed because the prisoner has failed to exhaust state court remedies, as required by law.

Challenges to a prisoner's conviction or sentence are noteworthy because the prisoners are provided with separate standardized forms for Section 1983 complaints and habeas corpus petitions by the clerk's office for U.S. District Courts. These two sets of forms clearly indicate what type of legal (or cause of) action that the Section 1983 plaintiff (or habeas corpus petitioner) can pursue by filling out the particular form. For example, the Section 1983 form clearly asks the plaintiff to state what sort of deficiency exists within the correctional institution, how the plaintiff has been harmed by that inadequate policy or specific action, and what sort of compensation or changes in policy the plaintiff seeks. To some extent, there always will probably be some degree of confusion because of the lack of legal representation by an attorney. Even if the forms were made perfectly clear by the court, it is difficult to imagine every potential habeas corpus *pro se* petitioner choosing the correct form to complete.

The most frequent manner of disposition is a court dismissal of the case (74%), as shown in Table 4. Twenty percent of the issues are disposed of by the court granting the motion of the defendant. Finally, four percent of the issues result in stipulated dismissal, and another two percent end in trial.

Table 4
Manner of disposition

Manner of disposition	n=4483
Court dismissal	74%
Dismissal on defendant's motion	20%
Stipulated dismissal	4%
Trial verdict	2%
Total	100%

As shown in Table 5, the most frequent reason for the court's decision to dismiss a Section 1983 petition is because the prisoner failed to respond to a court order within a required time period. For example, the prisoner failed to respond to a report prepared by the correctional institution on the treatment of the prisoner. The court notifies the prisoner that the report will be treated as a motion for summary judgment and that the motion will be granted, unless the prisoner files an objection. If the court neither receives a response to the notice nor receives any objection to the motion, the court thereby grants the motion. Additionally, if the court can determine no evidence of a constitutional rights violation, the case is dismissed (19%). For example, a prisoner may be injured after slipping on a wet floor outside the cell. The court will dismiss this claim if there is no evidence of deliberate intent by correctional officials to harm the prisoner by failing to maintain adequate physical conditions. The slippery floor might be the result of negligence, but ordinary negligence is not a cognizable cause of action under

Table 5
Reasons for court dismissals of Section 1983 lawsuits

Reasons	n=3136
Plaintiff failed to comply with court rules (e.g., did not respond to court's requests for information in a timely manner, nonindigent prisoner failed to pay filing fees)	38%
No evidence of constitutional rights violation (e.g., action by correctional officer might have been negligent but there is no evidence of a deliberate intent to harm the prisoner)	19%
Frivolous (i.e., no arguable basis in law or fact)	19%
Issue is noncognizable under Section 1983 (e.g., habeas corpus)	7%
Defendant has immunity (e.g., judge, prosecutor)	4%
Defendant is not acting under color of state law (e.g., wife, fellow prisoner)	3%
Other reasons (e.g., the issue is moot because the prisoner is no longer incarcerated and sought declaratory relief)	9%
Total	99%

Section 1983. For this reason, the federal court will dismiss the case as an invalid Section 1983 cause of action and might suggest that the prisoner pursue the matter as a tort action in state court. Other reasons for court dismissals are that the lawsuits are frivolous (e.g., the prisoner complained because he was disciplined for masturbating) (19%), the issue is not covered by the scope of Section 1983 (7%), the defendant (e.g., state trial judge) has immunity (4%), or the defendant (e.g.,

privately retained criminal defense attorney) is not acting under color of state law (3%).

Finally, prisoners are not entitled to legal counsel in Section 1983 cases, even if they are indigent, because there is no constitutional right to counsel in civil cases with the exception of proceedings to terminate parental rights. Because Section 1983 is a civil law, courts will only request counsel to represent a litigant when circumstances warrant it. One condition under which counsel is likely to be appointed is when the court believes that an evidentiary hearing is warranted. For example, in a case where it is undisputed that the prisoner suffered injuries caused by a correctional officer, the issue for the court is whether the force was excessive. To address that issue, the court may appoint counsel to ensure that the facts and the law are examined and cross-examined in the most thorough manner possible.

As shown in Table 6, ninety-six percent of all prisoners proceed *pro se*; only four percent have counsel whether court appointed or otherwise. Similarly, few cases involve evidentiary hearings, which were held in only three percent of all cases. Evidentiary hearings are held at the court's discretion. They generally are held in U.S. District Court buildings, although in some instances judges will conduct them at a correctional institution to maximize efficiency and to minimize the cost and security risks of transporting the prisoners to the court. These hearings involve the parties and their respective attorneys. Each side can introduce witnesses and the prisoner can testify before the court. These hearings may be completed in one hour, although some may last a full day or more. These hearings are different from status conferences, pretrial conferences, or settlement conferences, which are intended to inform the court of the outstanding issues in the case and the prospects of a negotiated resolution short of trial.

Table 6
Legal representation and evidentiary hearings

Legal representation	n=2737	Evidentiary hearings	n=2737
Pro se	96%		
Court appointed attorney	4%	Not held	97%
Other (e.g., ACLU; privately retained)	1%	Held	3%
Total	101%	Total	100%

Timeliness.

There are substantial differences among the cases in the pace at which federal courts resolve Section 1983 lawsuits. For cases that are disposed of quickly, litigation time is measurable in days; for cases that are disposed of slowly, litigation time is measurable in months, if not years. Median processing time is 181 days. In addition, as shown in Figure 2, the sample of cases has an elongated distribution of processing time indicating the potential of some Section 1983 lawsuits to remain active over many years. Issues in the fastest ten percent of the cases are resolved in thirteen days or fewer. Issues in the slowest ten percent of cases require approximately two years or more (714 days or more) to be resolved. The mid-point of the distribution is 181 days. Half of the cases take six months or fewer to be resolved and the other half take six months or more to be resolved. This distribution indicates that there is a considerable range in the time taken to dispose of issues and that half of all issues take a rather limited amount of time to resolve.

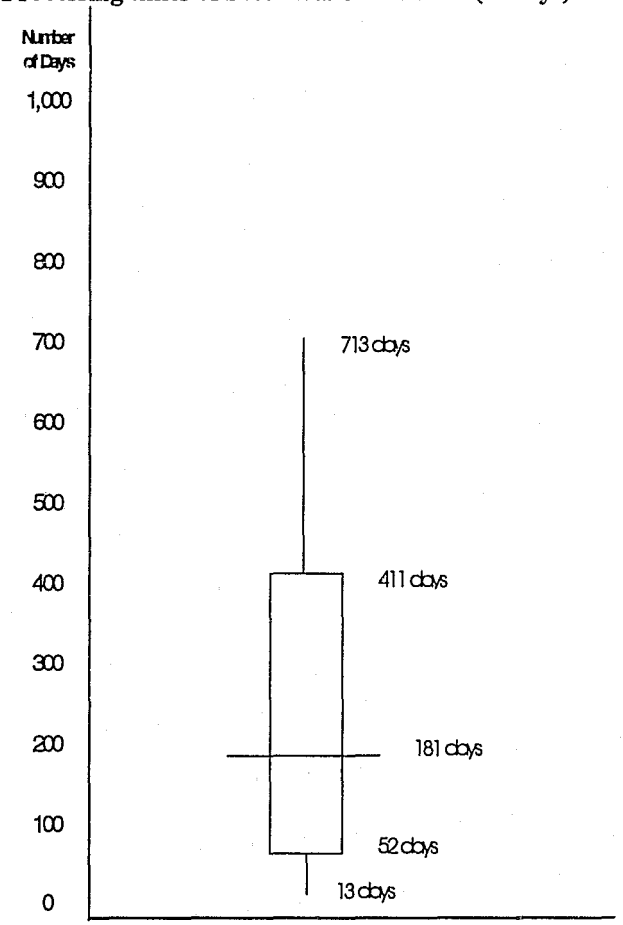
Some might argue that the distribution of case processing time serves as proof of the seemingly ceaseless nature of prisoner litigation. Such an interpretation ignores the complex nature of Section 1983 litigation, particularly those cases toward the lengthy end of the processing spectrum. This complex nature is the main subject of the remainder of the analysis.

Identifying gradations

According to literature on court administration, variation in aggregate case processing time patterns, such as those seen in Figure 2, reflects substantial differences in the complexity of the cases. A basic principle of court case management is that courts can and should devote their time and attention in proportion to case complexity (Solomon and Somerlot, 1989). This principle rests on the assumption that some cases involve settled issues of law and uncomplicated facts. These cases are considered to be routine. Other cases are considered complex because either the issues require detailed interpretation of existing laws, or call for interpretations in unsettled areas of law or are based on complicated and disputed facts.

In Figure 2, the processing times of Section 1983 lawsuits are presented in terms of a Box-and-Whiskers graph. This method of presentation provides five pieces of information concerning how timely Section 1983 litigation is resolved.

Figure 2
Processing times of Section 1983 lawsuits (in days)



The rectangular box in Figure 2 contains half of the issues. The bottom of the box is the 25th percentile, the top of the box is the 75th percentile, and the line across the box is the 50th percentile. The whiskers or lines at the bottom and top of the

box represent the 10th percentile and 90th percentiles, respectively.

There is evidence that the elongated picture of Section 1983 case processing time presented in Figure 2 reflects complexity as measured by the number of issues in a case. The greater the number of issues, the greater the complexity. Using the number of issues as a measure of complexity, the hypothesis is that cases with more issues should take longer to be resolved. A statistical test called the analysis of variance indicates support for that proposition. When cases are grouped into the categories of single issue cases, two issue cases, and cases with three issues or more, the average (mean) processing times for the three groups are significantly different. Single issue cases take 268 days, on average to be resolved, two issue cases take 312 days, and cases with three or more issues take 433 days. In this report, analysis of variance is used to determine whether different groups of lawsuits have distinctive processing times. This technique produces a number called the F-statistic. If the F-statistic is statistically significant, there is reason to believe that the groupings have different processing times. The F-statistic produced by the analysis of variance is 301.31 and is statistically significant at the .0001 level. This result indicates that there is support for the hypothesis that the three groups of cases have distinctive case processing times.

Understanding the nature of Section 1983 litigation (i.e., there are gradations composed of different combinations of issues, disposition, and case events) requires further examination of the aggregate profile. Does the overall pattern hold across both cases that are disposed of quickly and those that require longer amounts of time? One reason to suppose that the profile changes over time is that verdicts take longer to reach than court dismissals. Moreover, cases with attorneys might involve more maneuvering, more refined arguments, and more discovery than those without attorneys for prisoners. Certainly everyone would

want to know if some issues take longer to resolve than other issues. For these reasons, the case characteristics of issues, manner of disposition, and legal representation are examined in concert with case processing time and the pattern of these factors is presented in Table 7.

As shown in Table 7, the composition of Section 1983 lawsuits is not uniform but rather richly detailed. Challenges to convictions and sentences constitute twenty-one percent of the issues resolved within the tenth percentile, but decrease to six percent at the 100th percentile. Physical security issues increase from fifteen percent to thirty-two percent over the same range. This shift in the relative number of different types of issues is paralleled by a sharp decrease in court dismissals and increases in the proportion of dismissals on defendants' motions and stipulated dismissals. Additionally, there is a steady decrease in *pro se* legal representation. Lawyers for prisoners are virtually nonexistent for issues disposed of in six months or fewer, but they are involved in one in five of all issues that take the longest to be resolved. Finally, evidentiary hearings are almost never held for the issues resolved within the 26th and 50th percentiles. Among the issues that survive the longest, more than one in every ten involves an evidentiary hearing.

These patterns suggest three discernible gradations among Section 1983 lawsuits. The first gradation involves a combination of issues and case events that allow the court to dispose of cases within six months; the most common reason being court dismissal for failure to meet the legal requirements of Section 1983 or to satisfy procedural requirements such as time deadlines. For these cases, there are clear and conspicuous deficiencies to the issues that permit quick dispositions.

A second gradation covers cases that involve issues and case events that require the court take somewhat more time in resolving the prisoners' claims. Cases in the second gradation have a different set of dispositions than the first gradation. Nearly one third of the issues are disposed of by the court's granting a government motion to dismiss or for summary judgment. Fewer cases are being dismissed by the court. This is indicative of the degree to which the second gradation cases are more complex than cases in the first gradation. These lawsuits involve issues that the court cannot decide to dismiss without further information from the litigants. As a result, to decide the merit of the issues, the court needs the government to address the substance of each issue raised in the lawsuit. Clearly, these issues are more complex than the majority of issues dismissed at or below the median processing time. Furthermore, while most of the cases in the second gradation are not likely to have appointed counsel or an evidentiary hearing, they do have a greater probability of including one of these two court events than cases below the median processing time.

Finally, a third gradation consists of the most complex cases. They involve a set of issues and case events that demand the courts' resources to deal with the procedure of the lawsuit and the merit of the issues. There is considerable communication and filing of materials (e.g., motions) with the court as the prisoner engages in discovery and also objects to efforts by the government to dismiss the lawsuit. These cases take two or more years to resolve and are more likely than the two other gradations of cases to be resolved by settlement (11%) or end in a trial verdict (4%). One in ten have evidentiary hearings while slightly more have an appointed attorney.

Table 7
Profiles of Section 1983 litigation at different percentiles of case processing time

Issues (n)	0 to 10th percentile 13 days (379)	11th to 25th percentile 52 days (586)	26th to 50th percentile 181 days (1028)
Medical	14%	12%	19%
Physical security	15%	15%	20%
Due process	8%	10%	10%
Living conditions	4%	4%	5%
Physical conditions	7%	10%	10%
Religious expression	6%	4%	3%
Access	8%	7%	7%
Assault by arresting officer	1%	1%	2%
Conviction and sentence	21%	22%	16%
Other types of issues	17%	16%	9%
	101%	101%	101%
Manner of disposition (issues)	(378)	(583)	(1025)
Court dismissal	96%	96%	87%
Defendant's motion	2%	2%	12%
Stipulated dismissal	2%	2%	1%
Trial verdict	0%	0%	*
	100%	100%	100%
Legal representation (cases)	(268)	(409)	(664)
Pro se	99%	99%	99%
Court appointed	*	*	1%
Privately retained, ACLU	*	*	*
	100%	100%	100%
Evidentiary hearings (cases)	(286)	(409)	(665)
Held	*	*	1%
Not held	100%	100%	99%
	100%	100%	100%

Table 7 (continued)
Profiles of Section 1983 litigation at different percentiles of case processing time

Issues (n)	51st to 75th percentile 411 days (1084)	76th to 90th percentile 713 days (738)	91st to 100th percentile >713 days (566)
Medical	20%	16%	13%
Physical security	21%	21%	32%
Due process	12%	20%	16%
Living conditions	4%	4%	4%
Physical conditions	10%	9%	7%
Religious expression	5%	5%	4%
Access	8%	8%	6%
Assault by arresting officer	3%	4%	5%
Conviction and sentence	8%	6%	6%
Other types of issues	9%	7%	8%
	100%	99%	101%
Manner of disposition (issues)	(1068)	(735)	(555)
Court dismissal	66%	58%	54%
Defendant's motion	27%	34%	31%
Stipulated dismissal	6%	6%	11%
Trial verdict	2%	3%	4%
	100%	101%	100%
Legal representation (cases)	(670)	(402)	(266)
Pro se	97%	91%	82%
Court appointed	3%	8%	16%
Privately retained, ACLU	*	1%	2%
	100%	100%	100%
Evidentiary hearings (cases)	(669)	(402)	(266)
Held	3%	5%	13%
Not held	97%	95%	87%
	100%	100%	100%

Refinement in the gradations

Existence of gradations raises the question of why such clusters form. Why are some issues resolved more rapidly than others? To what extent are the differences in the types of issues, manner of disposition, and legal representation associated with significant differences in processing time? For example, is the length of elapsed time from filing to resolution significantly greater for issues where the prisoners are represented by attorneys?

The data used to address these questions include only the issues that meet a threshold level of complexity rather than the entire set of issues, which includes many issues that fail to meet the basic requirements of Section 1983. To lump issues containing basic procedural defects with those that do not have such defects would be a mistake, although it is not easy to draw a clear line of separation between the two groups. The distinction made in this report is the division between routine and complex issues according to processing time. The issues of research interest are those that take more than six months to resolve. They are considered to be more "meaty" issues.

One of the obvious groupings to examine is the substantive classification of issues in Section 1983 complaints. Do medical treatment issues take longer to resolve than most other issues? Indeed, does each of the issue categories have its own particular processing time? According to the data presented in Table 8, the different types of issues raised by the prisoners are associated with significantly different processing times.

Issues involving allegations of assault by an arresting officer (721 days), excessive force by correctional officers (661 days), and a lack of due process (606 days) tend to take longer, on average, to resolve than issues involving inadequate living

conditions (546 days), inadequate medical treatment (510 days), or denial of religious expression (503 days).

Table 8
Average (mean) processing times (in days) for different types of Section 1983 issues*

Issues	Processing time~
Assault by arresting officer	721
Physical security	661
Due process	606
Other types of issues	569
Living conditions	546
Challenges to conviction	531
Access	512
Medical treatment	510
Religious expression	503
Physical conditions	490

* Physical security issues take 661 days, on average, to resolve. Issues involving religious expression take 503 days, on average. The F-statistic of 6.296 is significant at the .0001 level, which means that observed differences in average processing times are statistically significant.

One possible reason for this pattern is that the courts are especially sensitive to issues concerning the use of force. Punishment is intended, by definition, to deprive individuals of particular pleasures and opportunities enjoyed by the rest of society, but it is not intended to be cruel and unusual. A basic interpretation of the Eighth Amendment's prohibition against cruel and unusual punishment is that neither criminal defendants nor offenders are to be subject to the arbitrary, capricious use of force. Even lengthy custodial sentences should not include assault by correctional officers or violence by other inmates. For this reason, the courts are likely to take considerable time to

review issues that concern the alleged use of excessive force with very close scrutiny.

However, it is also unlikely that the courts differentiate cases exclusively on the type of issues they present. Not every issue of excessive force is given more time and attention than other types of issues, such as inadequate medical treatment or access to the courts. While some issues take longer, on average, to resolve than other issues, issues are not the sole determinant of processing time. Legal representation and evidentiary hearings are two factors that might be used as proxies for the presence of other complexities, which are likely to affect the processing time for all types of issues. If so, this is evidence that the courts are devoting time and resources to detailed questions of fact and law. They are giving individual attention to all questions and deciding which warrant more consideration.

Tables 9 and 10 indicate that, in addition to the underlying type of issue, legal representation and evidentiary hearings have independent contributions to the length of processing time. When prisoners have attorneys, the average length of time from filing to disposition is 825 days compared to 551 days when prisoners are *pro se*. Similarly, when issues have an evidentiary hearing, the average processing time is 893 days compared to 549 days for issues that do not have an evidentiary hearing. The effects of these two factors hold up across all types of issues.

As shown in Table 9, medical treatment issues involving an attorney take an average of 743 days to be resolved, but those without an attorney take an average of 486 days to resolve. Similarly, physical security issues with attorneys for the prisoners take an average of 976 days to resolve and those without an attorney take an average of 628 days to resolve.

The same pattern is seen in Table 10 regarding evidentiary hearings. As an illustration, for physical security issues with

evidentiary hearings, the average processing time is 922 days. When hearings are not held, the average is 622 days. Similarly for issues concerning physical conditions, those with evidentiary hearings take 750 days to resolve. Those without evidentiary hearings take 475 days. Hence, the time taken to resolve issues is a complex function of the type of issues, type of legal representation, and whether evidentiary hearings are held.

Table 9
Average (mean) processing time (in days) with and without attorney representation for prisoners*

	Type of legal representation	
	Court appointed, privately retained, ACLU, or other types of attorney	*Pro se*
Physical security	976	628
Due process	972	577
Living conditions	967	515
Assault by an arresting officer	770	710
Medical treatment	743	486
All other types of issues	707	551
Religious expression	690	492
Challenges to convictions	636	524
Physical conditions	635	480
Access	454	514

* The medical treatment issues with attorneys take 743 days, on average, to resolve and those without attorneys take 486 days, on average, to resolve. The F-Statistics of 5.642 (for the effects of the type of issue) and 61.290 (for the effects of legal representation) are both significant at .0001. This means that both the type of issue and the type of legal representation independently affect processing time.

The exact interrelationship between these factors is difficult to disentangle. However, it is possible to sort out the relative influence of different potential sources of variation in case processing time. Using the statistical technique of regression analysis, the effects of the different types of issues, number of

issues, type of legal representation, and whether an evidentiary hearing is held were examined.

Table 10
Average (mean) processing time (in days) with and without evidentiary hearings being held*

	Hearing held	No hearing
Assault by arresting officer	1132	674
Due process	975	583
Medical treatment	943	481
Physical security	922	622
Religious expression	873	473
Physical conditions	750	475
Access	688	503
All other types of issues	620	568
Living conditions	568	545
Challenges to convictions	563	530

* Medical treatment issues with hearings took 943 days, on average to resolve and those without hearings took 481 days, on average, to resolve. The F-Statistics of 5.022 (for the effects of the type of issue) and 82.689 (for the effects of whether evidentiary hearings are held) are significant at .0001. This means that both the type of issue and the holding of evidentiary hearings independently affect processing time.

The results indicate that the holding of evidentiary hearings is more strongly related to case processing time than any of the other factors. The second and third most significant determinants of case processing time were the appointment of counsel by the court and the number of issues, respectively. Cases with appointed counsel take significantly longer to resolve than cases where the prisoners are *pro se*. And the greater the number of issues in a case, the longer the elapsed time from filing to final disposition. Most of the other possible

determinants, including each issue type, have weaker effects on case processing time than evidentiary hearings, appointment of counsel, and the number of issues in the case. (A copy of complete regression results may be obtained by contacting the NCSC project staff.)

These findings do not mean that evidentiary hearings "cause" some cases to be processed slower than others. Rather, the holding of hearings reflects the heightened scrutiny that judges and court staff give to some cases. When they need more time and information to resolve issues on the merits, they use the evidentiary hearing as a vehicle. Thus, courts do appear to be distinguishing among Section 1983 lawsuits using a variety of relevant criteria for deciding how to devote their resources.

The willingness of judges to sort through the large volume of cases and their commitment to giving every case individual attention is expressed by a judge from one of the U.S. District Courts included in the study. The judge expressed these views:

> I don't like prisoners. Nobody pretends to like them, but every once in a while, one of these people is right. And a society is judged by how it treats the least among it, not the best. I'm not worried about how presidents of banks and chairmen of the board and of country clubs are treated, or star quarterbacks, or other prima donnas. The job of the Constitution is to make sure that everyone is treated properly. Mr. [name of prisoner] falls into the everybody category.

Outcomes.

Whether Section 1983 litigation takes six months or two years to resolve, the final result is either favorable or unfavorable to the prisoner. However, the outcome is not simply one of winning or losing. Instead, outcomes can be classified into three

categories: win nothing, win little, and win big. Win nothing means that the issues are dismissed by the court or the court grants the defendant's motion for summary judgment (or other dispositive motion). Win little means that the prisoner and the correctional institution settled before trial and agreed to a change in policy or to a financial payment to the prisoner. Win big means a bench or jury trial verdict for the prisoner, although the amount of the award might not always be larger than the amount of the settlement payments in other cases.

The overwhelming majority of the prisoners win nothing (94%). Seventy-five percent of the issues are dismissed by the court and twenty percent result in the granting of defendants' motions to dismiss. In four percent of the issues, prisoners win little through stipulated dismissals or settlements although the terms of the settlements are not always made public (i.e., the terms of the settlement are not part of the information in the court's case file).

While the remaining two percent of the issues result in trial verdicts, less than half of them (i.e., less than one half of one percent of the issues) result in a favorable verdict for the prisoner. Yet, a complete understanding of outcomes goes beyond these aggregate figures. It is important to consider what the issues are when prisoners win little or win big and what compensation is made to the prisoner.

There are 20 stipulated dismissals (or settlements) in the study sample in which the terms of settlement are publicly identified and four trial verdicts. A near majority of the issues in these cases (45%) involve excessive force by correctional officers; failure to protect inmates from threats, harassment, and violence by other inmates; improper body cavity searches; and assaults and harassment by arresting officers. The dollar amount given to prisoners in the settlements ranged from $10, with attorney fees still pending, to $13,000 in compensation to prisoners. In

one instance, there were both compensatory damages and punitive damages. Similarly, the three verdicts with specified awards all involve issues of excessive force by correctional officers. The amount of awards range from $10,000 to $40,000, including attorneys' fees.

There are two reasons why the dollar amounts of settlements and verdicts in Section 1983 lawsuits are smaller than the multi-million dollar awards that are highly publicized in the media. One reason is that because the prisoners' wages are either nonexistent or very limited, there is very little opportunity to sue for lost wages due to hospitalization, convalescent care, or permanent injuries. In state court tort litigation, a substantial component of compensatory damages is either lost wages or foregone earnings. This possibility arises infrequently with prisoners.

A second reason is that media accounts exaggerate the typical award in civil litigation. For example, a study of jury trial verdicts in 45 of the 75 largest state trial courts found that the approximate median award in tort cases was $54,109 (Goerdt and Barnett, 1994). By this standard, the settlements and verdicts in Section 1983 lawsuits are not unusually small.

Finally, the significance of even a small number of successful lawsuits by prisoners goes beyond the dollar amount of the awards. Section 1983 lawsuits should not be taken out of the federal court system solely because they are assumed to lack a basis in law and fact. The successful lawsuits also counter the claim that meritorious lawsuits fall through the cracks and are overlooked by federal courts. Instead, the settlements and verdicts indicate that some lawsuits warrant attention, that federal courts recognize this fact, and that they devote their resources accordingly.

Conclusion and implications

Challenges to conditions of confinement are of profound significance to the integrity of the American justice system. The U.S. Constitution's prohibition against cruel and unusual punishment is a clear indication that the founding fathers did not intend jails or prisons to be institutions where correctional officials could deliberately harm inmates through odious policies or specific abusive actions. Punishment is intended to be harsh and to deprive prisoners of many opportunities available to the rest of society. However, the U.S. Supreme Court has established constitutional standards to which correctional officials must adhere or face the threat of prisoners' lawsuits under Section 1983 of the U.S. Code. This report has attempted to describe the basic profile of this substantial body of litigation. Because more than one in ten civil lawsuits in the entire federal district (trial) court system is a Section 1983 lawsuit, it is important to know what the complaints look like, how they are handled, and what are the outcomes.

The essential aspects of Section 1983 litigation in nine states (Alabama, California, Florida, Indiana, Louisiana, Missouri, New York, Pennsylvania, and Texas) are highlighted below.

(1) Section 1983 lawsuits include both routine cases that are disposed of quickly and complex cases that require two years or greater to resolve.

(2) The particular types of issues raised in the lawsuits (especially excessive force by correctional officers), the appointment of legal counsel for the prisoner, and the holding of evidentiary hearings are proxies of case complexity and significantly increase case processing time. Judges and court staff devote time and other resources to sort the credible claims from the non-

meritorious claims (i.e., deciding which claims warrant the appointment of legal counsel, the holding of evidentiary hearings, or the scheduling of trials).

(3) Prisoners do win Section 1983 lawsuits, though this is statistically rare. Successful lawsuits demonstrate that some plaintiffs are not only credible but correct in their allegations of civil rights' violations.

Certainly, the continuing rise in the volume of Section 1983 lawsuits suggests that the federal courts review methods of resolving such disputes to ensure efficient and effective review. At the same time the existence of prisoner successes makes it clear that the U.S. District Courts must continue to maintain (and even enhance) their current vigilance and meticulousness in wading through the voluminous Section 1983 litigation to preclude any legitimate claim from falling through the cracks. These findings have implications for the perennial question concerning the appropriate forum in which Section 1983 lawsuits should be reviewed.

Systematic evidence suggests that approximately half of all prisoners' grievances that now enter the federal court system concern matters that could and probably should be handled through state administrative procedures rather than be dismissed on procedural grounds in federal courts. Failure to sue an individual acting under color of state law, failure to raise an issue cognizable under Section 1983, failure to sue an individual without immunity, and failure to raise an issue that rises to the level of a constitutional violation are common among Section 1983 lawsuits. Prisoners' grievances need to be channeled to other forms of relief, such as habeas corpus, state torts, family mediation, and dispute resolution processes within prisons and jails. These other forms of resolution might be more satisfying to the prisoner while enhancing the ability of the courts to deal

with the more serious cases involving the more difficult task of establishing credibility and liability.

This is not to suggest that issues that do not meet the requirements of Section 1983 are necessarily trivial to the prisoner. They can take on dimensions of profound significance to the inmate who has few possessions, few friends, and few contacts with the rest of society. However, they require neither detailed examination of complex facts nor precise interpretations of law by the federal courts. Assuming that some administrative review would lead to a resolution of issues short of filing Section 1983 lawsuits, one way to render this review is to require exhaustion of state administrative grievance procedures at state prisons and jail.

The Civil Rights of Institutionalized Persons Act of 1980 (CRIPA) adopted by the U.S. Congress authorizes the U.S. Attorney General and the federal courts to certify state administrative grievance mechanisms and to require exhaustion of certified mechanisms before lawsuits can be filed in federal court. This legislation was seen originally as a way to resolve grievances on their merits, short of litigation. However, that goal has not been realized because most state prisons and jails have not sought certification and have not been encouraged by the Attorney General or the federal courts to seek certification. While federal courts have learned how to deal with these kinds of cases efficiently, little would be lost to individual plaintiffs by trying to avert their filing cases in the federal courts. The benefit of resolving some issues administratively is that the federal courts would be free to resolve the complex Section 1983 cases more quickly. Because the Federal Courts Study Committee previously has endorsed this action, a reasonable way to proceed might be for the leadership of the Circuits of the U.S. Courts of Appeals to encourage state correctional agencies under their respective jurisdictions to submit plans for new

grievance mechanisms. The responsibility for implementing CRIPA does not need to fall entirely with the Attorney General.

A second implication of the findings is that attention and discussion should be targeted at the Section 1983 lawsuits that are likely to enter the federal court system, even if CRIPA is implemented successfully in most states. The lawsuits that meet the basic requirements of Section 1983 and that present varying degrees of complexity in terms of legal questions and facts should be the focus of judges and court administrators in the design of case management policies and procedures.

The gradations of Section 1983 lawsuits identified in this report are not fine enough to suggest what particular policies and procedures will work best in all courts. However, the gradations provide the basis for an agenda of experimentation and research to determine what works well under alternative conditions. The agenda consists of two basic areas of inquiry. What screening mechanisms are most effective? And, once cases have been screened, how can they be handled most efficiently?

While the current research was not designed to gather systematic information on the particular ways in which each of the sixteen courts screen and manage Section 1983 litigation, the NCSC project staff did learn about some of the policies that some of the courts have adopted. For example, in the Middle District of Alabama, the magistrate judges and *pro se* law clerks work as teams in handling virtually all of the Section 1983 litigation in their court in terms of screening, conducting evidentiary hearings, and preparing extensive recommendations to the judges on how the cases should be resolved. They have developed tight time schedules governing key events (e.g., discovery, pretrial motions) and issue orders requesting specific and detailed responses from both parties to the litigation. On the other hand, in some courts, such as the Southern District of

New York, the senior *pro se* staff attorney, working with three other *pro se* staff attorneys under the supervision of the chief judge, performs the same sorts of activities that the *pro se* law clerks and magistrate judges perform in Alabama. Additionally, in Southern District of New York, the authority granted by 28 U.S.C. § 1915(d) is used frequently to *sua sponte* dismiss nonmeritorious lawsuits. Finally, the Southern and Northern Districts of Texas are hybrids between the Alabama and New York systems with law clerks in the two clerk of courts offices performing the screening functions and using case management plans similar to the ones used in Alabama. These examples only illustrate what some of the courts have done and in no way exhausts the creative strategies used in the other courts. Moreover, these illustrations are intended to underscore the value of compiling information more systematically to determine if some approaches work better than others.

Answers to the unanswered questions concerning the screening and processing of Section 1983 lawsuits are neither obvious nor easy. Indeed, Section 1983 litigation has not been the subject of a case management study despite its substantial share of the federal civil court caseload. The proposed agenda is one way to begin to fill this gap. Concerning case screening, future policy research should include the following questions:

(1) Does every court have some screening mechanism in place? Is the mechanism part of the civil case screening function? Or is it more specifically targeted at Section 1983 litigation?

(2) Who performs this function? Law clerks to individual judges? *Pro se* law clerks? What role do magistrate judges play? Do they and their law clerks screen cases?

(3) What factors do court staff use in the screening process to determine case complexity in Section 1983 cases? How are

judges informed about which Section 1983 cases are considered to be more complex than others?

(4) Do the court personnel in charge of screening also schedule key events for Section 1983 cases? For example, are the parties (i.e., prisoner and correctional officials) informed of what they are expected to do in terms of filing documents with the court, conducting discovery, filing pretrial motions, and responses to motions, and so forth? Are there scheduling orders and are they tailored to the complexity of Section 1983 cases?

Concerning the processing of cases after they have been screened, the following questions arise:

(1) Do the courts intervene in the litigation process in terms of conducting proceedings, such as status conferences or pretrial conferences?

(2) Do the courts place Section 1983 cases on different "tracks" with different limits for discovery, such as the number of interrogatories and the number of depositions?

(3) Upon completion of the time allowed for discovery, are Section 1983 cases set automatically for trial? What is the policy on continuances?

(4) Who is assigned trial ready cases? Senior judges or new judges?

The importance of having answers to these questions lies with the nature of Section 1983 litigation. Everyone agrees that prisoners should not be physically abused or denied adequate medical treatment. Likewise, the integrity of correctional officers should not be subject unnecessarily to protracted litigation. Case management is an important way to use scarce

resources effectively while ensuring constitutional rights are upheld for all.

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