RESOLVING STATE PRISONER GRIEVANCES IN FEDERAL COURTS

A Report Submitted to the
National Institute of Justice
U.S. Department of Justice
Washington, D.C.

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This research report was supported by a grant from the National Institute of Justice (83-IJ-CX-0049). I benefited appreciably from the advice and assistance of many persons at the Institute. However, the analyses and conclusions contained in this report do not necessarily reflect the policies of the National Institute of Justice.

ABSTRACT

The objective of this study is to explore how state prisoner grievances are resolved in the federal courts. After the U.S. Supreme Court decided in 1964 that inmates have the right to file civil suits under Section 1983 of Title 42 of the U.S. Code, alleging that the conditions-of-their-confinement fall short of constitutional standards, the volume of prisoners' suits has grown dramatically.

Controversy surrounds the question of how courts have reacted to the exponential growth in this sector of the federal caseload. Supreme Court Chief Justice Warren Burger and others contend that these cases are an unnecessary drain on scarce resources while William Bennett Turner and others claim that the courts ruthlessly dismiss inmates' cases and overlook meritorious suits. Resolution of this debate is of considerable significance because state prisoner litigation now accounts for over seven percent of the nationwide district court caseload and over twelve percent of the cases subsequently appealed to the federal circuit courts.

The study's principal findings are fivefold:

(1) Contrary to Turner and others, there is little evidence to suggest that inmates' cases receive less attention than other civil cases.

(2) Although Chief Justice Burger is correct in asserting that inmates' cases place demands on the courts' resources, this burden is borne by federal magistrates to a considerable extent.

(3) Burger's contention that few inmates' cases clearly demonstrate a violation of constitutional rights under Section 1983 is supported by the data.

(4) Contrary to conventional wisdom, evidence indicates that the interstate variation in the filing rates of Section 1983 cases has little to do with objective characteristics of state correctional systems, such as size, racial and ethnic composition resource levels, and the death rate among prisoners.

(5) The key hypothesis to emerge from the study is that inmates have an attitude toward litigation as a remedy for grievances. Some inmates are more

predisposed in their minds to use litigation as a tool to gain relief from some alleged deprivation than are others. In fact, state correctional systems vary according to the degree to which their respective inmate populations are litigious. The attitude of litigiousness, which exists independently of the objective features of state correctional systems, is the primary source of varying filing rates among the states. Although it is not obvious how to treat these attitudinal antecedents of behavior, there is some evidence to suggest that some states successfully have addressed the phenomenon of litigiousness -- the willingness to sue -- through concrete actions. States which experience low filing rates appear to have put grievance mechanisms into place that work as viable alternatives to litigation.

In light of these observations, and given the high social cost of resolving grievances in the federal courts, the principal recommendation is for the Attorney General of the United States to seek more widespread implementation of the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA). CRIPA would require exhaustion of state administrative remedies if a state's grievance procedure meets certain basic standards of responsiveness, timeliness, and fairness.

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PREFACE

The growth in the caseload of federal courts since 1960 has been propelled by the filing of lawsuits by state prisoners. In 1964, Section 1983 of Title 42 of the U.S. Code was interpreted by the U.S. Supreme Court to permit inmates to challenge the conditions-of-their-confinement on the grounds that the conditions allegedly violate constitutional standards. This extraordinary decision has been followed by an exponential trend in lawsuits against state correctional officials, holding them liable for substandard circumstances.

Despite the fact that Section 1983 suits impose considerable demands on the resources of the courts, correctional agencies, and state attorneys general (who generally represent the correctional officials), the manner in which these cases are resolved has been the subject of limited empirical investigation. One reason is that Section 1983 suits are not neatly categorized as purely civil or purely criminal cases -- the suits seek civil damages and injunctive relief, but they are filed by individuals convicted of state criminal offenses. Hence, they do not fit the traditional research agendas of individual scholars or national funding sources. Moreover, the responsibility for improving the resolution of prisoner grievances is not clear. Although Chief Justice Warren Burger has called for a search for alternatives to litigation, his potential audience involves officials from different layers of government (federal and state), different agencies (state attorneys general, state correctional officials) and officials with different power bases (federal judges have life-time tenure, while state officials are either elected or appointed for short terms). Moreover, legal advocacy organizations for prisoners are vigilant in seeing that inmates do not lose any advantage related to federal court litigation. As a result, representatives of each of the groups involved in the resolution of Section 1983 suits have voiced serious concerns, but these concerns, which reflect particular institutional interests and incentives, are expressed in isolation without the benefit of the perspective and insights of the other participants.

The objective of this report is to present some information that may be useful in establishing a basic foundation for future discussions among all of the participants. Essentially, the report addresses three questions: What is the nature of prisoner litigation and how are Section 1983 suits currently handled? What state level

factors are associated with the rate at which the suits are filed? What might be done to achieve a more effective and efficient use of resources in resolving prisoner grievances?

This report was written during my tenure as a Visiting Fellow at the National Institute of Justice where I had the good fortune both to work on this study and to try to raise policy research questions concerning Section 1983 suits among practitioners and researchers. As part of my effort to promote more dialogue, I chaired roundtable discussions on prisoner litigation at the 1984 and 1985 Law and Society Association meetings and the 1984 American Political Science Association meeting. The sessions involved federal judges, federal magistrates, correctional officials, assistant attorneys general, inmates' attorneys and scholars in the field. Additionally, I organized the Winter, 1984 issue of The Justice System Journal on this topic. Finally, I made presentations to the National Association of Attorneys General and the Washington State Department of Corrections on Section 1983 litigation. The dual opportunity to conduct systematic research and to share ideas with experts in the field made the fellowship a most satisfying experience.

Whatever contribution this report makes is in large measure due to the advice and support of colleagues at the National Institute of Justice. I especially enjoyed the constructive criticism of Cheryl Martorana, who served as my project monitor. Other Institute staff members who assisted me on many occasions include Bernard Auchter, Robert Burkhart and Joel Garner. Larry Greenfield and Pat Langan of the Bureau of Justice Statistics were also helpful.

Several persons offered me ideas on how to organize the project or assisted me in data gathering and analysis. In this regard, I would like to thank Pat Allen, Joy Chapper, George Cole, Stephen Ehlrich, Malcolm Feeley, Karen Feste, Lawrence Hunter, Jessica Kohout, Jennifer Knutsen, Paul Nejelski and Jack Stoddard. Additionally, I am grateful to Pam Crawford and David Cook who were instrumental in guiding me through the intricacies of the data maintained by the Administrative Office of the U.S. Courts. Finally, the preparation of this report is attributable to the expertise of Georganna Follin. Although the report's deficiencies remain mine, the positive aspects are shared with others.

September 1985

EXECUTIVE SUMMARY

INTRODUCTION

Increasing demands have been placed on the federal court system since the 1960s especially in the area of civil litigation. Annual district court caseload figures are, for example, four and a half times greater in 1985 than they were two and a half decades ago. According to some judges and legal scholars, a principal component of this change in the overall caseload is an exponential increase in post-conviction suits filed by state prisoners challenging the conditions-of-their-confinement (e.g., Posner, 1985:73-84).

State inmates file thousands of lawsuits every year against prison officials who, the inmates allege, are responsible for sub-standard facilities and inadequate policies. The vehicle for these suits is a provision of the U.S. Code. Section 1983 of Title 42 of the U.S. Code stipulates that state and local officials are liable for damages when policies, practices, or specific actions violate constitutional rights.

The U.S. Supreme Court interpreted Section 1983 to apply to state prisoners in a series of ground-breaking decisions in the mid-1960s. These decisions established standards for a variety of areas of prison life, including religious expression, communication, visitation, privacy,

medical care, diet and exercise, punishment, and access to the courts. When an inmate believes that prison operations fall short of these standards, a complaint form can be submitted to a U.S. District Court. If the form is legible and properly signed, the form is docketed and becomes a legal case that the court must act on.

This process is undertaken by thousands of prisoners annually. Over seven percent of the U.S. District Court civil cases are accounted for by this type of litigation. Additionally, of all the civil cases that are appealed from U.S. District Courts to the Circuit Courts of Appeal, over twelve percent are Section 1983 suits. Yet, whereas there is agreement on the fact that the volume of prisoners' suits has grown, there is disagreement on how these cases affect judicial workload and the courts' responses to these suits.

THE DEBATE

Chief Justice Warren Burger (1976) and others (Baude, 1976; The Federal Judicial Center, 1980; Howard, 1980; Remington, 1974; and Sensenich, 1979) have called attention to the steadily rising number of prisoners' cases. They view most of these suits as a waste of scarce judicial time because the suits are inartfully drawn and their meritoriousness is difficult to determine. Once the underlying issue is uncovered, many of the cases are found to be frivolous.

Furthermore, even if the cases are nonfrivolous, they do not appear to require elaborate and costly federal court procedures to resolve.

A counter argument is that the caseload volume of Section 1983 suits overstates its workload burden. Turner (1979) and Edwards (1983) contend that most inmate litigation is disposed of at the early stages of the legal process, and, thereby involves minimal judicial time. In fact, federal district courts are characterized as ruthlessly dismissing prisoners' cases on the pleadings alone because they are deemed patently "frivolous or malicious" (Turner, 1979). (For a similar point made about state courts, see Bergesen, 1972).

RESEARCH ISSUES

The central research question guiding this project is, how do federal district courts respond to Section 1983 suits filed by state prisoners? Basically, the current study is intended to explore three issue areas relevant to policy discussions concerning Section 1983 suits:

> Nature and Court Processing of Section 1983 Suits. What sorts of constitutional deprivations are alleged in the complaints? How long does it take to resolve suits? What is the common mode of disposition?
>
> Correlates of the Suits. What factors explain why the filing rate of prisoners' suits varies from state to state? If a state spends more money per prisoner, does it experience a lower rate? Do states with

higher death rates among prisoners have higher filing rates?

Potential Solutions. In light of available empirical data, what might be done to resolve inmate grievances more effectively, efficiently, and fairly?

DATA AND METHODOLOGY

Information on Section 1983 suits comes from two basic sources. Case processing patterns are based on data gathered from the annual reports and computer records of the Administrative Office of the United States Courts (AO). They are supplemented by individual case level data gathered from records in selected U.S. District Courts.

Measures of factors associated with interstate variation in filing rates are taken from government publications including reports of the Bureau of Justice Statistics, the annual Sourcebook on Criminal Justice Statistics, the Compendium on State and Local Government Finances published by the Bureau of the Census, and so forth.

Most of the information is presented in the form of frequencies and percentages. However, the issue of how and why filing rates vary from state to state is examined through the standard technique of step-wise multiple regression.

FINDINGS

Nature of the Complaint. Generally speaking, five types of grievances constitute a majority of the complaints

filed in district courts. They are in rank order of frequency: Medical, General Conditions (e.g., poor ventilation, excessive noise, inadequate heat), Assault (guard brutality and attacks by other inmates), Access to the Courts, and Other (an assortment of grievances which do not fit into any standard category). The reason for presenting the grievances in rank order is that their exact relative frequency varies from jurisdiction to jurisdiction. Data, which were collected from cases filed in the U.S. District Courts for Colorado, Maryland, and Wyoming, did not present a perfectly uniform distribution of grievance types across all the courts. Another reason is that the grievances are different for single and multiple issue complaints. The relative frequency of a given type of grievance may occur frequently in single issue complaints but infrequently in multiple issue complaints or vice versa.

Despite the flux in the precise number of each possible type of grievance, three descriptive propositions can be gleaned from this ranking. One noticeable fact is that the grievances that were the basis for the Supreme Court's initial decisions in this area are not the stuff of contemporary individual inmate complaints. Whereas the religious expression of Black Muslims and other First Amendment rights were the disputes over which prisoners gained their legal authority to

challenge conditions-of-confinement (see Cooper v. Pate, 278 U.S. 546 (1964)), they are no longer a source of grievances.

A second observation is that the prisoner's right to have access to a law library, legal materials, and counsel is itself a basis of many suits. That is, after the Supreme Court decided that the inmate is entitled to these resources, prisoners now complain about their adequacy, the hours that they are available, and so forth. The irony is that inmates may, in fact, use these resources in formulating complaints about alleged inadequacies in the resource materials.

A third, and perhaps unexpected observation, is the high incidence of "other" complaints. These complaints are particularistic in nature. For example, an inmate grieves because the use of handcuffs during transport caused him humiliation. Humiliation allegedly was caused because the security personnel maintained the handcuffs while the inmate was transported through public facilities (e.g., airports, restaurants) en route to prison. Without passing judgment on the validity of this complaint, it seems fair to say that this type of grievance is unlikely to constitute a clear violation of constitutional rights under Section 1983. That is, particularistic grievances do not fall within the general standards set forth by the U.S. Supreme Court. To the extent that is true, one would expect to find district courts moving

to dismiss many cases on the grounds that they are not cognizable under Section 1983.

Case Processing and Disposition Patterns: A View From Four Selected U.S. District Courts. Section 1983 cases tend to be handled in much the same manner as other civil litigation. 1/ They are disposed of at similar stages of the legal process and the time taken for Section 1983 cases and other cases to reach a given stage is not appreciably different. These findings call into question the thesis that courts move faster, and perhaps hastily, to rid themselves of prisoner litigation than other cases. These inferences are

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1/ The process of filing a Section 1983 case begins when the inmate either picks up necessary forms or requests them from the clerk of court. A particular complaint form is used for claims filed under Section 1983. Generally, the packet of materials includes that form, a copy of a motion for leave to proceed in forma pauperis, (Virtually all inmates file their cases without legal representation and also seek a waiver of filing fees), and a general set of instructions. On receiving forms from the inmate, a court clerk reviews them for legibility and attachment of signatures. If a judge or magistrate signs an order granting the in forma pauperis motion, the complaint is docketed and becomes a legal case. The judge or magistrate then chooses one of three options: (1) issue a summons, (2) dismiss the case, or (3) submit interrogatories before deciding between options (1) and (2). In instances where a summons is issued, there will likely be a hearing before a judge (or magistrate) and court staff with the inmate, an assistant state attorney general (or privately retained counsel) representing the state department of corrections, and witnesses, if any, in attendance. Cases may be dismissed at such a hearing and, if not, the case proceeds into discovery and toward a pretrial conference possibly followed by a settlement conference and then trial.

drawn from Table 1, which presents a comparison of case processing patterns for Section 1983 cases and a comparable group of private civil cases. (In private civil cases, the U.S. government is not a party.)

In Table 1, data from four selected U.S. District Courts -- Colorado, Maryland, Western District of Virginia, and Wyoming -- offer information on the time taken to dispose of cases, the method of disposition, and case outcome. 2/ A random sample of 1488 private civil cases, excluding all inmates' cases, terminated between 1980 and 1983 in these jurisdictions is compared to all 4540 Section 1983 cases terminated during this same period.

One basic observation that can be made on the basis of the district court level data is that Section 1983 cases are more likely to be disposed of on the court's own motion (62.4% versus 11.8%). However, other civil cases are more likely to

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2/ These districts were chosen because they vary according to several important contextual factors. Concerning race and ethnic composition of prison populations, Colorado has the highest percentage of Hispanics in the nation, Maryland's prison population is approximately seventy-five percent black, while Virginia has a more equal distribution of whites and blacks, and Wyoming's population is nearly all white. In terms of size, Virginia has one of the largest prison systems in the country, Maryland's is relatively large, Colorado's is slightly less than average size, and Wyoming's is among the smallest. Finally, all four states were accessible during the course of the research project for collection of information from court records and interviews with court and correctional officials.

Table 1

Comparison of Disposition Patterns Between
Section 1983 Cases and
Other Private Civil Cases

U.S. District Courts for Maryland, Western District
of Virginia, Colorado and Wyoming

	Section 1983 Cases N = 4540			Private Civil Cases N = 1488		
Stage of Disposition	% of Cases	Cumulative % of Cases	Median No. of Days Days From Filing to Disposition	% of Cases	Cumulative % of Cases	Median No. of Days From Filing to Disposition
Before Issued Joined	5.7	5.7	147	17.3	17.3	181
After Motion Decided But Before Issue Joined	62.4	68.1	173	11.8	29.1	202
Issue Joined But No Other Court Action	1.8	69.9	283	16.5	45.6	387
Issued Joined and After Judgment of Court on Motion	20.0	89.9	291	17.4	63.0	341
Issued Joined and After Pretrial Conference but Before Trial	2.4	92.3	729	23.3	86.3	574
During Court or Jury Trial	1.0	93.3	423	2.8	89.1	577
After Court or Jury Trial	5.9	98.2	428	9.2	98.3	640
Other	1.8	100	403	1.7	100	275
Totals	100%	100%	235	100%	100%	393

be disposed of by a dropping of the lawsuit either before the defendant has responded (17.3% versus 5.7%) or after a response has been made (16.5% versus 1.8%). This first fact reinforces a point made by others that the workload of most Section 1983 cases falls on the shoulders of magistrates and pro se law clerks rather than judges. 3/ Yet, these data do not indicate that these decisions are made hastily or without a careful consideration of the facts. The median elapsed time taken to dispose of 68 percent of the inmates' cases in this manner is 173 days. Although this means that most cases are resolved at an initial stage of the process, other civil cases take only slightly longer to resolve (202 days). It is difficult to interpret this difference as an indication that Section 1983 cases fail to receive sufficient attention.

3/ In these four courts and many others across the nation, federal magistrates handle the cases through the initial hearing stage and then turn them back over to the judges for processing thereafter -- discovery pretrial conferences to final disposition (see, e.g., Seron, 1983:5,55). A major exception to this process is the involvement of a specifically designated pro se law clerk who initially may review materials and prepare the case for handling by a judge. Here the law clerk is performing some of the tasks otherwise done by a magistrate. Currently, pro se clerks are in approximately 30 U.S. District Courts. Finally, the process of screening and initial handling is not qualitatively different for cases where the inmate has legal representation by a private attorney or legal aid. The presiding judge may initially examine the complaint, but the case usually is forwarded to a magistrate for handling.

The district court data indicate that a higher percentage of the other civil cases survive the first four stages (36% versus 11.1%), but the respective percentages of the two groups proceeding beyond the pretrial conference to trial converge. However, there are noticeable differences between the four courts in the trial rates. For example, whereas in Maryland the trial rates for Section 1983 and other civil cases are 9.3% and 12.5% respectively, the corresponding figures for Wyoming are 2.1% and 19.8%. Hence, although the nationwide data indicate that, on average, there is no statistically significant difference in the trial rates between inmate and non-inmate cases, there is considerable variation across district courts. 4/

The district court data reveal other points of similarity and dissimilarity between the two groups of cases. In both groups, class action suits are the rare exceptions. Fewer than two percent of the civil cases sought class action certification and fewer than one percent of Section 1983 cases

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4/ The resolution of Section 1983 cases by magistrates and pro se law clerks probably accounts for their workload burden, as measured by the Federal Judicial Center. The workload factor in 1979 was .4301 compared to an average of 1.0, hence, indicating that Section 1983 cases impose 57% less work than the average civil case in federal district courts (Flanders, 1980). However, this measure underestimates the court's complete workload burden because it includes only the use of judge time.

were of this form. Modest amounts are recovered by the plaintiffs in both groups. In cases where awards were made, the median amount recovered was $30,500 for the private civil cases and $1,000 for the Section 1983 cases.

A fundamental difference between the groups of cases is the success that the inmates enjoy in winning a court verdict. Plaintiffs generally win approximately thirteen percent of the time with most cases (74%) involving a settlement or withdrawal where the winning side is not obvious and not discernable from the AO's data. In contrast, inmates experience verdicts in their favor in only one and a half percent of the time. The four courts vary in the judgments for inmates but there appears to be no relationship between them and the rates at which the inmates bring suits. 5/ The significance of the inmates' success rate is a matter of interpretation. The actual rate may not be vital if the goal of litigation is to put pressure on correctional institutions by giving inmates a forum to raise grievances that might otherwise be ignored or denied. Yet, as lofty a viewpoint as this may be, it tends to overlook the fact that inmates' cases

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5/ The percentages of outcomes in favor of inmates and the number of suits per inmate are as follows: Maryland (1.5 and .0385); Virginia (1.1 and .1099); Colorado (3.4 and .0414); and Wyoming (0 and .0540). These data do not suggest that a higher winning rate for inmates results in more (or less) suits.

tend to be dismissed in the early stages of the legal process. To the extent that there is some problem underlying the suit that does not fit the mold of a constitutional issue, the federal courts would seem to be an inappropriate arena.

Case Processing and Disposition Patterns: A View From Individual Cases. A closer look at how and why Section 1983 suits are resolved is gained by examining individual case files. Based on a review of all Section 1983 cases terminated in the U.S. District Court for Colorado during the year ending June 30, 1983, several observations can be drawn from the data presented in Figure 1. One observation is that most of the cases are dismissed on the Court's motions. However, none of the cases are dismissed, as Turner hypothesizes, because they are deemed frivolous of malicious on their face. If they are considered frivolous, this judgment is made after an evidentiary hearing has been held.

A second observation is that the reasons why the Court dismisses the cases are because they are noncognizable under Section 1983; the defendant is not acting under color of state law as required under Section 1983; or they fail to present evidence of a constitutional rights violation. In other words, the inmates are raising grievances for which Section 1983 is not a remedy or they are suing a party (e.g., judge, prosecutor, or private attorney) who is either immune from liability under Section 1983 or not a state official. Finally,

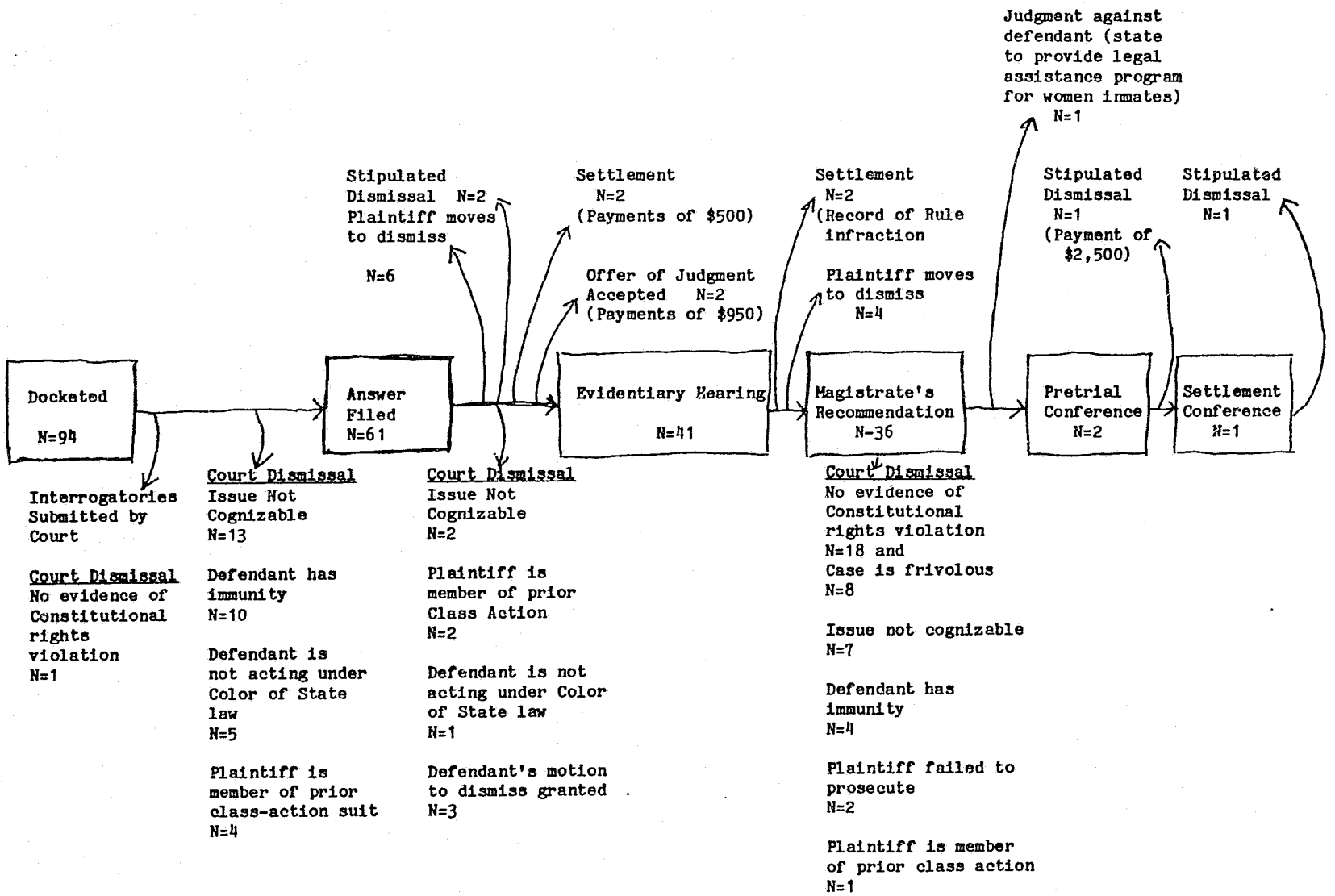

Figure I

State Prisoner Section 1983 Suits Terminated Between July 1, 1981 and June 30, 1983
U.S. District Court for Colorado

the inmates may be raising issues that are not challenges to the conditions of their confinement. Instead, they are challenges to the validity of their convictions, which are not subsumable under Section 1983. The inmates are told to file such complaints as habeas corpus petitions and to first exhaust state court remedies, which is a requirement of federal habeas corpus petitions.

Correlates of State Prisoner Cases. Knowing that Section 1983 cases appreciably add to the federal courts' caseload and workload levels raises the question of how and why more suits are filed each year. There is some virtue in first examining this issue from the level of state correctional systems. Basically, it seems reasonable to determine if overall features of the conditions surrounding inmates -- prison population size, correctional resources, racial composition of the inmate population -- have effects on the inmate's probability of suing officials before analyzing more detailed characteristics of institutions and the individual inmates. The working hypothesis is that such factors are sufficiently powerful to influence the likelihood of legal cases arising, although they may be interrelated with variables at more macro levels of analysis. In fact, state level factors included in this study are also used in institutional level predictions of inmate behavior.

This approach follows in the tradition of the political science literature on state public policy and the macro-level political sociology literature on prisons (e.g., Jacobs, 1983:17-23). Six sets of variables, each with specific indicators, which seem appropriate to test as predictors of litigation volume, are listed below.

Prison Population Size and Composition. (1) Total number of inmates, (2) Proportion of black inmates, (3) Proportion of Hispanic inmates, (4) Proportion of women inmates, (5) Percentage of inmates sentenced for violent crime, and (6) Percentage of inmates sentenced for murder and attempted murder.

Expenditures. (7) Total direct expenditures per inmate, (8) Correctional payroll per inmate. (9) Minimum salaries for correctional officers, and (10) Minimum salaries for correctional superintendents.

Structure and Services. (11) Degree of overcrowding, (12) Percentage of inmates over rated capacity. (13) Number of nurses per inmate, and (14) Number of psychiatrists per inmate.

Control and Violence. (15) Percentage of correctional officers that are minority group members, (16) Ratio of inmates to staff members, (17) Death rate among inmates, excluding executions, (18) Death rate among inmates, excluding executions and natural causes.

Litigiousness. (19) The number of habeas corpus cases filed per inmate, (20) The number of writs of mandamus filed per inmate, (21) The net civil caseload per inmate, (22) The number of court orders and decrees against state institutions.

Environment. (23) Incarceration rate of all inmates, (24) Incarceration rate of black inmates, and (25) Incarceration rate of Hispanic inmates.

The dependent variable is the volume of Section 1983 cases. Volume is measured in terms of the number of cases filed per inmate and is interpreted as the probability of lawsuits. The specific approach used to analyze this overall relationship is to search for the combination that best explains litigation through multiple step-wise regression analysis. These analyses are conducted on data gathered for the years 1972-1983 for the fifty states and the District of Columbia, although some years have incomplete information. 6/

The results of the step-wise multiple regression analysis suggest that the probability of Section 1983 suits being filed is generally the product of the degree of litigiousness in a state correctional system. Other such factors as levels of services, death rates, extent of overcrowding, only occasionally contribute to the explanation of filings. 7/ As seen in Table 2, which presents the factors

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6/ 1972 is the starting point because that is the first year that the AO isolated the number of state prisoner civil rights cases for each U.S. District Court.

7/ Multiple regression identifies the combination of factors that provide the most complete, yet nonoverlapping, explanation of variation in the dependent variable. The total amount of variation in the dependent variable that is accounted for by the factors is represented by R^2, which can range from 0.0 to 1.0. In Table 2, one can see that the combinations of factors for certain years, e.g., 1978, provide for a more complete explanation than those associated with other years, e.q.,

[Footnote continued]

Table 2
Characteristics of State Correctional Systems that Best Explain Variation in the Number of Section 1983 Suits File Per Inmate
1972 - 1983

Year	State Correctional System Characteristics	Probability of Section 1983 Filings for a Unit Change in Each Characteristic	Variation Explained by Each Characteristic	Variation Explained All Characteristics (R^2)
1972	Number of Writs of Mandamus Per Inmate	.47	.22	
	Incarceration Rate of All Inmates	.62	.16	
	Number of Habeas Corpus Petitions Per Inmate	.71	.12	
	Total Number of Inmates	.75	.06	
	Correctional Payroll Per Inmate	.78	.04	.60
1973	Death Rate Among Inmates Due to Natural Causes, Suicides, Accidents and Attacks by Other Inmates	.25	.06	.06
1974	Number of Writs of Mandumus Per Inmate	.58	.33	
	Number of Habeas Corpus Petitions Per Inmates	.28	.07	.40
1975	Number of Writs of Mandamus Per Inmate	.57	.32	
	Number of Habeas Corpus Petitions Per Inmate	.29	.08	
	Private Civil Caseload Minus Civil Rights Cases	.25	.06	.46
1976	Number of Habeas Corpus Petitions Per Inmate	.47	.22	
	Percentage of Women Inmates	-.33	.11	.33
1977	Number of Habeas Corpus Petitions per Inmate	.43	.18	
	Correctional Payroll Per Inmate	.29	.11	
	Percentage of Inmates Sentenced for Murder or Attempted Murder	.28	.07	.36

1978	Number of Nurses per Inmate	.65	.42	
	Number of Habeas Corpus Petitions Per Inmate	.49	.24	
	Percentage of Minority Correctional Officers	.37	.12	
	Percentage of Inmates Over Capacity	.24	.05	
	Percentage of Inmates Sentenced for Violent Offenses	.22	.04	.87
1979	Number of Habeas Corpus Petitions Per Inmate	.54	.30	
	Death Rate Among Inmates Because of Suicides, Accidents, and Attacks by Other Inmates	.46	.19	.49
1980	Number of Habeas Corpus Petitions Per Inmate	.75	.57	
	Number of Nurses Per Inmate	.55	.28	.85
1981	Number of Nurses Per Inmate	.46	.21	
	Number of Habeas Corpus Petitions Per Inmate	.64	.20	.41
1982	Number of Habeas Corpus Petitions Per Inmate	.42	.18	
	Minimum Salaries of Correctional Officers	.29	.08	
	Percentage of Black Inmates	.26	.07	.33
1983	Number of Habeas Corpus	.39	.15	.15

in order of their explanatory power for each year between 1972 and 1983, the alternative indicators of litigiousness persistently appear among the most important variables.

These findings may be accounted for by the hypothesis that it is the inmates' attitudes toward litigation as a remedy for grievances rather than objective conditions of prison life against state correctional officials that affect the probability of suits. This attitudinal dimension ranges from a willingness to use litigation as a tool to a reluctance to use litigation as a means for gaining relief from some deprivation. Inmates vary according to where their are located on this dimension; some are more litigious in their attitude than are others.

7/ [Footnote continued]

1974 -- the R^2 in 1978 is much higher than it is in 1974. Second, the contribution that every factor makes to the explained variation in a given year is also identified. As an illustration, in 1974, the number of habeas corpus petitions per inmate explains 33% of the variation and the number of writs of mandamus per inmate explains 7%. The third statistic is the regression coefficient which indicates the direction a amount of change in the dependent variable associated with a unit change in a given explanatory factor. For example, in 1974, for every increase in the probability of a habeas corpus case being filed, there is a 58% chance that a civil rights case will also be filed. Finally, if any one of the twenty-five independent variables is not included in Table 2, this means that it did not explain any more of the variation in civil rights litigation than was already accounted for by the factors that are listed in the table.

The evidence from the regression analysis indicates that this attitude is independent of objective state correctional system characteristics. For example, two states with similar profiles in the allocation of resources for prisons may have inmate populations with different attitudinal orientations concerning litigation. One system may have inmates that are more predisposed toward litigation than the other.

Certainly, it is nonobvious that the objective factors are generally unimportant predictors of Section 1983 litigation. Poor conditions foment litigation and progressive conditions avert it according to the conventional wisdom. Despite the plausibility of this belief, it is strongly disconfirmed when confronted with systematic evidence.

The implication of this finding is made more striking by the direction of the relationship between objective characteristics and litigation. Contrary to common suppositions, more resources for corrections is positively related to litigation rather than inversely related: Those states that allocate more resources have higher filing rates than those states that allocate less resources. Although the measures of resource allocation are generally not key predictors; when they do emerge they point to a widespread irony of improved prison conditions. Improved conditions contribute to rising expectations; inmates expect even more

when conditions are improved than if the status quo is maintained.

Future research is necessary to determine exactly what is litigiousness in the prison context. Observations of specific institutions are needed to sort out the psychological and sociological components of this phenomenon. Nevertheless, it seems reasonable to hypothesize that inmates will be more predisposed to file lawsuits concerning their grievances with prison life under two conditions: (1) There is no viable alternative to filing suits, and (2) The inmates have very little sense whether their grievances are meritorious. In these circumstances, when inmates believe that correctional officials have caused them injury, they will avail themselves of Section 1983 and claim that the officials' actions (e.g., stolen property) or inactions (e.g., lack of medical services) require some sort of relief (e.g., a new radio, a back brace). Hence, the lawsuit, rather than an informal adjustment process, becomes an instrumental and an expressive activity for coping with injuries and the frustrations associated with confinement.

There is some state level evidence that corroborates this interpretation of the regression analyses. After the U.S. Supreme Court opened the gates for inmates to sue for protection of their constitutional rights, state correctional departments mounted mechanisms to resolve grievances administratively. Some states established an administrative

remedy procedure with grievance forms, grievance coordinators, required time schedules for initiation of and response to grievances, and an appeal ladder. Other states adopted alternative mechanisms such as, inmate councils, ombudsmen, inmate grievance commissions; and some adopted a combination of different forms.

There is very little systematic evidence on the effectiveness of every mechanism in place, but a separate examination of selected states offers some intriguing information. A study intended to describe alternative dispute resolution mechanisms for inmate complaints found that states that had low numbers of civil rights suits per inmate had established grievance procedures that effectively managed to resolve complaints (Cole, Hanson, Silbert, 1984). For example, North Dakota, Maine, South Carolina, Massachusetts and Minnesota, which are five of the ten states with the lowest ratios, were among the first to establish comprehensive mechanisms. 8/ In contrast, among the ten states with the

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8/ As an illustration, in 1972, Minnesota established a correctional ombudsman. The ombudsman, who is accountable to the governor, investigates inmates' complaints with the formal authority to issue subpoenas and to make recommendations public. With an office of six professionals who operate primarily at the institutions, the ombudsman deals with over 3,000 complaints arising annually from an institutional population of approximately 2,300. The ombudsman responds to

[Footnote continued]

largest ratios, West Virginia had no grievance procedure as of 1983, Alabama established its procedure only in 1982, and Virginia operated with a non-independent ombudsman until 1983 when it introduced a statewide grievance procedure, Arizona established a mechanism in 1981, and Rhode Island enacted a remedy procedure in 1980. Because Cole, Silbert, and Hanson intended to describe alternative mechanisms, not all states were examined. However, these polar opposite states suggest the importance of assessing grievance mechanisms more closely in future research.

CONCLUSIONS AND RECOMMENDATIONS

On the basis of empirical evidence, five basic propositions emerge from the study of court processing of Section 1983 suits. They are:

8/ [Footnote continued]

and investigates the grievances expeditiously. In most instances, a staff member interviews the inmate the day the complaint is received and resolves it within three weeks. The ombudsman has developed credibility with inmates and the corrections department concerning what constitutes a valid grievance. Nearly half of the complaints are deemed unsubstantiated on investigation and are not pursued further. Where the complaint is deemed valid, most of the matters are resolved informally, and recommendations for general policy changes are almost always accepted. The Minnesota program's success is attributable to such tangible factors as formal independent authority, adequate staffing, and limited turnover among the personnel (see Cole, Hanson, Silbert, 1984). Similar observations have been made of grievance mechanisms in South Carolina and Massachusetts.

(1) Federal district courts handle inmates' cases with essentially the same degree of thoroughness and speed as other civil cases.

(2) Federal district courts render these services despite the fact that most suits are found to offer no clear evidence of constitutional rights violations.

(3) In federal district courts, the burden placed on the federal courts by the workload demands of the inmates' suits is borne by federal magistrates to a considerable extent rather than federal judges.

(4) The circumstances under which Section 1983 suits arise have very little to do with objective characteristics of state correctional systems. State correctional systems with different levels of Section 1983 suits share similar objective characteristics. And states with different objective characteristics have similar levels of suits.

(5) The inmates' attitudes toward litigation as a means to secure relief for alleged deprivations are the proximate source of their filing behavior. One inmate may view litigation as an indispensable way to deal with an injury and another inmate may be reluctant to pursue a legal strategy to deal with the same type of injury. At the aggregate level of correctional systems, the reason why more Section 1983 suits per inmate are filed in one state than in another is that there is a greater attitudinal orientation of litigiousness among the prison population in the former.

In summary, the federal courts are clearly an inappropriate forum for most inmate grievances. Inmates deserve a fair hearing but it is questionable whether federal court processes are necessary or efficient. Hence, the search for alternative methods of dispute resolution merits high priority. Four courses of action seem worthwhile:

(1) The Attorney General of the United States should focus the attention of key state decisionmakers on the implementation of the Civil Rights of Institutionalized Persons Act of 1980. Provisions of this Act stipulate that when a state grievance mechanism is certified by the Attorney General, it must be exhausted before a federal court processes a prisoner's Section 1983 complaint. This legislation is a promising approach that may save the many costs associated with litigation, promote greater state government responsibility in resolving state prisoner grievances, and enhance the intrinsic values of federalism.

(2) State governors, attorneys general, and correctional commissioners should meet independently of the Attorney General's action and analyze how their grievance mechanisms might be improved.

(3) Research should be undertaken to improve the use and effectiveness of the Civil Rights of Institutionalized Persons Act of 1980. The potential payoffs of this legislation are considerable but there is very little systematic information concerning its effects. Evidence of positive effects would spur more widespread adoption. Research would help to pinpoint aspects of the legislation and corresponding federal regulations that should be modified, clarified, or strengthened.

(4) Research should address the issue of litigiousness among inmates. What causes it? How does it develop? What options are available to a state correctional system to cope with this phenomenon?

CHAPTER I

INTRODUCTION

BACKGROUND

The U.S. Congress passed legislation after the Civil War to protect Southern Blacks from reprisals during Reconstruction. Among the laws enacted was the Civil Rights Act (or Klu Klux Klan Act as originally entitled) of 1871. Section 1 of this Act held that officials responsible for such reprisals were liable for damages. Presumably, the rationale behind this measure was that officials would be deterred from depriving Blacks of their rights by the threat of lawsuits brought by individuals whom they had harmed. This statute, recodified, is now Section 1983 of Title 42 of the U.S. Code.

Section 1983 took on contemporary significance when the U.S. Supreme Court made a series of decisions in the 1960s concerning the citizens' constitutional rights toward state and local governments. Basically, the Court interpreted Section 1983 as a legal remedy permitting citizens to sue governmental officials when policies, practices, or specific actions fell short of constitutional standards. A variety of activities involving police departments, public housing authorities, park and recreational agencies, and county hospitals, (see, e.g.,

Schuck, 1983) were viewed by the Court as being subject to the following key provision of Section 1983: 1/

> Every person who under color of any statute, ordinance, regulation, custom, of any state or territory, 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 for the party injured in action of law, suit in equity, or other proper proceeding for redress.

One of the extraordinary extensions of Section 1983 was the Court's decision that prison and jail inmates could raise claims in court challenging the conditions-of-their-confinement on the grounds that the conditions violated their constitutional rights. After a landmark case which struck down restrictions on Black Muslim inmates, 2/ the Court spelled out standards to which correctional officials must adhere in a

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1/ 42 U.S.C. § 1983.

2/ Cooper v. Pate, 278 U.S. 546 (1964). Prior to this decision, state prisoners had long been able to attack the validity of their convictions on federal constitutional grounds through the filing of habeas corpus petitions in federal courts. The right of state prisoners to file federal habeas corpus petitions goes back to the Habeas Corpus Act of 1871, now Section 2441 of the U.S. Code. With Cooper v. Pate, however, individuals who have been properly convicted are able to engage in a new and different form of post-conviction litigation. In this report, primary attention is on the more recent developments of prisoner litigation challenging conditions-of-confinement, although the two types of post-conviction activity are compared in Appendix I in terms of their relative shares of federal court caseload.

broad range of prison activities. 3/ Standards were established to govern the following areas of prison life: religious expression, communication, visitation, privacy, medical treatment, physical security, diet and exercise, punishment, and access to the courts. Within these areas, the federal courts of appeal and the federal district courts have rendered many more specific decisions. The product of these federal court decisions has been a growing body of correctional law. 4/

Yet, several years after the establishment of prison standards in the precedent-setting cases, inmates continue to use Section 1983 as a legal remedy for grievances against correctional officials. 5/ The complaints range from claims

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3/ For a history of those decision, see Jacobs (1983) and Bronstein (1980).

4/ Appendix II offers a summary description of what legal standards have evolved over the twenty-year development of correctional law. This appendix includes both Supreme Court and lower court decisions.

5/ Other legal remedies are available to challenge conditions of prison confinement in federal court. They are 42 U.S.C. § 1981, 42 U.S.C. § 1985(2) and (3), and 42 U.S.C. § 1986. However, allegations under these remedies must involve charges of racial-based discrimination. Additionally, inmates may bring tort claims in state courts when they believe state officials have been negligent as opposed to being the source of deprivations of their constitutional rights. As will be demonstrated in Chapter II, however, inmates sometimes file suit in federal court under Section 1983 only to have the judge

[Footnote continued]

that medical problems are not properly treated to charges of excessive force by correctional officials to arguments that there are unnecessary restrictions on inmates' telephone access to attorneys. On one level, these cases are overlooked by some experts in the field of law and policy because of their "impure" quality. They are not completely civil in nature because they are brought by criminal offenders against criminal justice officials and may properly be seen as part of the federal courts' criminal workload. However, they are not completely criminal in nature because they seek relief for civil damages and are processed in civil courts. (See Posner, 1985:63-5). Yet, despite the fact that Section 1983 suits do not permit classification as simply as other cases, they have become one of the most numerically significant segments of the

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5/ [Footnote continued]

deem the complaint to be one of negligence and not a constitutional violation. In this situation, the federal court usually dismisses the case on the grounds that is fails to meet the criteria of a Section 1983 and advises the inmate that pursuance of the grievance is appropriate in the state court arena.

Another remedy is a provision of the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA). Under CRIPA, the Attorney General of the U.S. may sue institutions that subject prisoners to "egregious" conditions. However, the number of actions that have been brought on behalf of prisoners is very small.

federal court caseload, whether measured in absolute or relative terms. 6/

The increasing volume of Section 1983 suits is illustrated by the fact that they rose from 218 filings in federal district courts nationwide in 1966 to 18,034 in 1984. 7/ Correspondingly, these cases accounted for 0.31 of one percent of the district courts' civil caseload in 1964 to 7.31 percent in 1984. In addition to the cases filed initially at the trial level, some of those cases are then appealed to the federal courts of appeal. The data indicate that whereas 3.89 percent of the appellate courts' civil caseload in 1967 was Section 1983 litigation, the figure had risen to 12.87 percent by 1984. Finally, the ratio of suits to inmates is striking, despite the growing number of persons incarcerated in recent years, which might be thought to lower the ratio. The

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6/ Hereinafter, Section 1983 suits refer to state prisoner civil rights cases brought in federal court. This definition excludes state inmates' civil rights cases brought in state courts and excludes other types of state prisoner civil rights suits and post-conviction litigation such as writs of mandamus and habeas corpus petitions. Section 1983 suits filed in federal court have the advantage of being a specific category in the recordkeeping system of the Administrative Office of the U.S. Courts (AO). Unlike the AO, most state administrative offices of the courts do not maintain information on the filing, processing, or disposition of such cases. Hence, the systematic study of Section 1983 suits within the federal court system is more manageable.

7/ The basis for the figures reported in this section is presented in Appendix I.

ratio, which appears to have stabilized, has been approximately one suit for every twenty-two inmates from 1981 to 1984. Because all of these figures exclude civil rights suits filed in state courts and parallel suits flowing from federal correctional institutions, 8/ the total volume of prisoner litigation attacking the conditions-of-their-confinement is clearly substantial. Observers identify the growth in Section 1983 suits as one of the principal causes behind the federal courts' caseload explosion that began after 1960 (Posner, 1985:73-84).

STATEMENT OF THE POLICY PROBLEM

Judges, policymakers, and scholars have expressed concern over the demands that Section 1983 suits place on the scarce resources of the legal system. Chief Justice Warren E. Burger has called attention to this situation and encouraged the search for ways to deal with these cases out-of-court but in a fair and effective manner. He has put it thus (Burger, 1976:190):

8/ The U.S. Supreme Court established the right of citizens to sue federal officials for monetary damages in a series of cases, including Bivens v. Six Unknown Federal Narcotic Agents of Fed. Bur. of Narcotics, 403 U.S. 388 (1971); Davis v. Passman, 442 U.S. 228 (1979); and Carlson v. Green, 446 U.S. 14 (1980). For inmates of federal correctional institutions, the Bivens remedy is open to them as well as the Federal Tort Claims Act and Section 1331 of the U.S. Code.

> Federal judges should not be dealing with prisoner complaints which, although important to a prisoner, are so minor that any well-run institution should be able to resolve them fairly without resort to federal judges.

Despite the widespread agreement that the volume of litigation, as measured by caseload levels, has increased, there are different opinions concerning the impact that Section 1983 suits have on the workload of the courts. Some observers share Burger's viewpoint that Section 1983 suits are a drain on judicial time and do not require complex and costly federal court procedures to resolve. Other observers believe an opposite effect is occurring; inmates' cases receive inadequate attention because judges are drawn more to the rest of their caseloads. In their haste, some meritorious suits may be overlooked.

Such polar opposite impressions surface, at least in part, because of the limited amount of systematic information on basic characteristics of Section 1983 suits, the handling of these cases, their disposition, and the circumstances giving rise to the litigation in the first place. Few empirical studies exist and many of those that do focus on other aspects of prisoner litigation, such as consequences of court-mandated changes in correctional institutions (Alpert, Crouch, and Huff, 1984; Hale, 1979; Harriman and Straussman, 1983), the implementation of those changes (Fair, 1983; Harris and

Spiller, 1977; Note, 1977; Note, 1978) and the appropriateness of the court involvement in state correctional affairs (Chayes, 1976; Diver, 1979; Eisenberg and Yeazell, 1980; Fiss, 1979; Frug, 1978; Mishkin, 1978; Rosenbloom, 1983). Hence, the void in our knowledge concerning the substance and processing of inmate litigation may inhibit resolution of policy discussions and the identification of solutions where problems exist.

RESEARCH OBJECTIVES

The purpose of this report is to offer the results of an exploratory empirical study on Section 1983 suits. One objective of the study was to gather descriptive information relevant to basic questions on the nature and handling of suits. What substantive sorts of deprivations do the complaints allege? How long does it take to resolve prisoners' cases? What is common method of disposition? Is the processing of prisoners' cases different from other civil cases?

A second objective was to gain some sense of how and why the rate of filings -- the number of suits per prisoner -- varies from state to state. Do large states experience a higher probability of being sued than small states? Do states that spend more money per inmate benefit from lower rates of litigation? Or does the death rate among prisoners signal which states have high levels of litigation?

Third, the intended purpose was to consider what might be done to resolve inmate grievances most effectively and efficiently in light of the information gathered on the nature, processing, and correlates of litigation. Should the approach taken by the Civil Rights of Institutionalized Persons Act of 1980 be encouraged? Do state administrative remedies need to be encouraged? Are certain restrictions on the inmates' access to the courts (e.g., partial payment of fees) promising alternatives? Or should the courts be given more resources to resolve these cases?

Despite the potential payoffs of answering these kinds of questions, one important caveat is in order. Unlike other research, this report does not place special emphasis on complex, protracted Section 1983 suits that result in intensive federal court supervision of court decrees over many years (e.g., Alpert, Crouch, Huff, 1984; Yarbrough, 1984). By design, this study is intended to gather data on a large number of cases in order to see the pattern in how Section 1983 suits are resolved. The emphasis on gathering data on a sufficient number of cases is paralleled by a research interest in studying a representative sample of cases in order to generalize to the population of all Section 1983 suits.

The remaining portion of this report is divided into three chapters. Chapter II is a description of the kinds of issues that prisoners raise in their suits and the handling of

those cases. This information is based on data gathered from individual case files in selected federal district courts and data collected by the Administrative Office of the U.S. Courts.

Chapter III is a statistical analysis of the correlates of the interstate variation of the number of suits per prisoner. Multiple regression analysis is used to analyze the relative importance of twenty-five social and economic characteristics of states in predicting litigation rates. Following the regression analysis, individual level correlates of litigation are explored through an analysis of a national inmate data base. Interviews that were conducted in conjunction with a survey of state prison inmates by the Bureau of Justice Statistics are reanalyzed for the specific purpose of the current research.

The fourth chapter is an analysis of what mechanisms might effectively resolve inmate grievances. Special attention is given to state administrative remedies and the Civil Rights of Institutionalized Persons Act of 1980.

CHAPTER II

THE NATURE AND PROCESSING OF SECTION 1983 SUITS

BACKGROUND

Virtually everyone agrees that the Section 1983 suits constitute a sizable percentage of the federal court civil caseload. Yet, as one moves beyond that proposition, the expression of opinions begins to take on more of a debate. Discussion and disagreement exist over the questions of how the courts have been affected by the exponential increase in Section 1983 suits and how they have adapted to this segment of their caseloads. Differences of opinion seem to reflect whether the participants in the debate are concerned ultimately over the maintenance of court efficiency or the maintenance of prisoners' rights. Whereas these goals are not incompatible, they are in competition with another. Hence, one can see at least two perspectives on the question of the relationship between prisoner litigation and judicial workload in light of these contending values.

For those concerned with the efficiency of the courts, a basic argument is that scarce time is wasted handling Section 1983 suits because many are inartfully drawn and their meritoriousness is difficult to determine (Sensenich,

1985:iii). 9/ Moreover, once the underlying issue is uncovered, many of the cases are found to be frivolous. While other cases may be nonfrivolous, they do not appear to require elaborate and costly federal court procedures to resolve (Baude, 1977:763; Burger, 1976; Federal Judicial Center, 1980:8-28; Howard, 1980:4). This line of reasoning had led to a consideration of a variety of ways to reduce the number of prisoner grievances requiring the time of federal judges (e.g., Remington, 1974) -- requiring exhaustion of state court remedies, streamlining court procedures, using magistrates or special law clerks, improving administrative grievance mechanisms -- as well as limiting the range of constitutional rights. 10/

In contrast, other commentators, who may be more vigilant in defending inmates' rights than in ensuring court efficiency contend that the increasing volume of Section 1983

9/ The alleged poor quality of prisoners' complaints is frequently attributed to the fact the inmates represent themselves or proceed on a pro se basis. Prisoners represent themselves because there is no right to counsel in Section 1983 cases. Hardwick v. Ault, 517 F.2d 295, 298 (5th Cir. 1975).

10/ One possible way to curtail the volume of suits filed under § 1983, is to narrow the scope of governmental actions that violate civil rights. According to some commentators (e.g., Stover, 1985) the U.S. Supreme Court has reined in breadth of inmates' civil rights in cases such as Bell v. Wolfish, 99 S. Ct. 1861 (1979) and Rhodes v. Chapman, 452 U.S. 337 (1981). Yet the flow of cases continues despite these decisions.

suits overstates its workload burden. Turner (1979) and Edwards (1983) argue that most inmate litigation is disposed of at the early stages of the legal process and, thereby, requires limited application of complex and time-consuming court procedures. In fact, federal courts are characterized as ruthlessly dismissing inmates' cases on the grounds that the complaints are "frivolous or malicious" (Turner, 1979). Rather than investigating the basis of the complaint, courts allegedly use Section 1915(d) of the U.S. Code and dismiss cases on their pleadings. 11/ A somewhat different point is made by analysts who believe that the pace of federal civil litigation is excessively slow. The pace of federal court action allegedly makes it an unattractive forum to prisoners who seek swift justice (Bergesen, 1972). 12/

11/ 28 U.S.C. § 1915(d). Courts may dismiss a case on the pleadings when the party, proceeding in forma pauperis (claiming inadequate resources to pay the normal filing fees), has filed a suit that is "frivolous or malicious". This situation potentially applies to virtually all prisoners because they generally claim an inability to pay the fees and file a motion to proceed in forma pauperis.

12/ Concern over the handling of state prisoner civil rights cases at the district court level is paralleled by concern over the reaction of the federal courts of appeal. One area of concern is the relatively low publication rate of circuit court opinions in prisoner cases (Reynolds and Richman, 1983:620-25). Reynolds and Richman contend that the low rate may appear as second-class treatment although the courts' procedures certainly would pass any equal protection test.

[Footnote continued]

RESEARCH QUESTIONS

Efforts have been undertaken to document the workload of Section 1983 cases (Flanders, 1980). Yet, despite the precision of the data, concern over the flow of prisoner cases continues and controversy continues over what the effects really are. This puzzling situation of ongoing debate, despite "objective" evidence, suggests that reality is captured by partial aspects of each of these divergent views rather than by one perspective exclusively. Based on this hunch, this report focuses attention on three issues of how and why courts allocate resources in resolving Section 1983 cases. Those issues are:

> (1) How do Section 1983 cases compare to other cases in terms of the stage of the legal process at which they are resolved? Do inmates' cases take longer to resolve? Do more of them go to trial?
>
> (2) What types of grievances are behind the inmates' suits? Do they satisfy the criteria of being bona fide constitutional suits? Or are they deemed frivolous?

12/ [Footnote continued]

Moreover, Reynolds and Richman contend that the lower rate may result from a conditioned response toward inmates' cases which they consider to be dangerous. Although second-class justice and conditioned responses are to be avoided, the available data are crude indicators of either phenomenon. Unless we know more about the basis on which the decision whether to publish is made, the publication rate is of limited use in assessing the quality of the treatment rendered to inmates' cases.

(3) Is there any connection between the nature of the complaint and how it is resolved? Are cases dismissed on grounds other than their being frivolous?

The objective of this chapter is to address these issues with data that have been gathered from the Administrative Office of the U.S. Courts (AO) as well as from individual case files in selected district courts. These data are supplemented with interviews with federal magistrates and district court staff members.

DATA

The process of filing a Section 1983 case begins when the inmate either picks up necessary forms at the institution or requests them from the clerk of a district court. A particular complaint form is used for claims filed under Section 1983. Generally, the packet of materials includes that form, a copy of a motion for leave to proceed in forma pauperis, and a general set of instructions. (Virtually all inmates file their cases without legal representation and also seek a waiver of filing fees.) On receiving forms from the inmate, a court clerk reviews them for legibility and attachment of signatures. If a judge or magistrate signs an order granting the in forma pauperis motion, the complaint is docketed and becomes a legal case. The judge or magistrate then chooses one of three options: (1) issue a summons to the defendant requesting an answer to the complaint, (2) recommend

dismissal for the case, or (3) submit interrogatories to either party before deciding between options (1) and (2). In instances where a summons is issued, there will likely be a hearing before a judge (or magistrate) and court staff with the inmate, an assistant state attorney general (or privately retained counsel) representing the state department of corrections, and witnesses, if any, in attendance. Cases may be dismissed or resolved in the inmate's favor after such a hearing and, if not, the case proceeds into discovery and toward a pretrial conference possibly followed by trial. 13/

In this report, case processing is viewed from three different levels of analyses: (1) district courts nationwide,

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13/ The filing and initial handling of state prisoner cases varies from jurisdiction to jurisdiction although this composite picture of pro se representation is true of many situations. Increasingly, magistrates handle the cases for the court through the initial hearing stage and then turn them back to the judges for processing thereafter -- discovery pretrial conferences to final disposition (Seron, 1983:55) The magistrate's authority in these cases is found in 28 U.S.C. § 636(b)(1).

A major exception to this process is the involvement of a specifically designated pro se law clerk who initially may review materials and prepare the case for handling by a judge. Here the law clerk is performing some of the tasks otherwise done by a magistrate. Currently, pro se clerks are in approximately 30 U.S. District Courts.

Finally, the process of screening and initial handling is not qualitatively different for cases where the inmate has legal representation by a private attorney or legal aid. The presiding judge may initially examine the complaint but the case usually is forwarded to a magistrate for handling.

(2) four selected district courts, and (3) individual cases. Each one offers a valuable perspective but the information is more detailed the lower the level of aggregation. A national perspective is gained by compiling the AO's annual statistics on closed cases during the period of 1968-84. These data indicate the general stages at which cases are terminated but lack information on corresponding processing time or the nature of the complaint. The source of these data are tables contained in the Annual Reports of the Administrative Office of the U.S. Courts.

More specific comparisons of disposition time, method of disposition, and case outcome are made by examining cases closed between July 1, 1979 and June 30, 1983 in four selected U.S. District Courts: Colorado, Maryland, Western District for Virginia, and Wyoming. 14/ This information was taken from an output computer file made available by the AO. A set of cases

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14/ These districts were chosen because they vary according to several important contextual factors. Concerning race and ethnic composition of prison populations, Colorado has the highest percentage of Hispanics in the nation, Maryland's population is approximately seventy-five percent black, while Virginia has a more equal distribution of whites and blacks, and Wyoming's population is nearly all white. In terms of size, Virginia has one of the largest prison systems in the country, Maryland's is relatively large, Colorado's is slightly less than average size, and Wyoming's is among the smallest. Finally, all four states were accessible during the course of the research project for collection of information from court records and interviews with court and correctional officials.

was drawn from the printout made from the output file and then keyentered to create a data file. The cases included a random sample of 1,488 private civil cases and all 4,540 Section 1983 cases terminated during this time period.

The third level of analysis is based on a review of individual case files from the U.S. District Court for the District of Colorado, with supplementary information from District Courts for Maryland and Wyoming. These data provide snapshots of the types of grievances, disposition patterns, influence of writ writers, and the critical role of federal magistrates. Observations concerning case processing based on the nationwide and court level data are refined in light of the individual case level information.

FINDINGS

A View from the National Level

During the period of 1968-1984, the AO recorded the number of civil cases terminated at each of four stages:

> (1) No Court Action. The plaintiff either withdrew or filed a motion to dismiss before the defendant filed an answer to the suit. Alternatively, the defendant might have filed a response and then the plaintiff withdrew or moved to dismiss the case.
>
> (2) Before Pretrial Conference. The case might have been dismissed by the court on its own motion before the defendant filed an answer. If there was an answer, there likely was an evidentiary hearing followed by the court either moving to dismiss the case or granting a

defendant's motion to dismiss (or summary judgment motion). The plaintiff might also dismiss the case possibly because of a negotiated settlement. However, in the case of Section 1983 litigation, this stage also includes judicial orders granting relief to inmates based on recommendations made by magistrates.

(3) During or After Pretrial Conference. The case was disposed of (dismissed, settled, withdrawn) after an answer had been filed and a pretrial conference had been held but before trial began.

(4) During or After Trial. The case was disposed of after the trial began but in some instances, the disposition was before conclusion of the trial. Dispositional outcomes include dismissals, voluntary settlements, withdrawals and verdicts by judges or juries.

From the AO's data, the percentage of cases that were disposed of at each stage are calculated for every year between 1968 and 1984 and then the average of these percentages for each stage is computed. The average percentage for Section 1983 cases at each stage is then compared to the corresponding average for all private civil cases excluding all state post-conviction cases, land condemnations, and deportation reviews. Private civil cases are the comparison group because they do not involve the U.S. government as a party to the suit. Such suits seemed more appropriate to compare with litigation involving state prisoners and state governmental officials. The results of these analyses are found in Table 1.

One critical difference in the way in which the two groups of cases are processed is that five times as many

Table 1

Percentage of Cases Disposed of at
Different Stages of the Legal Process
U.S. District Courts
1968 - 1984

	Section 1983 Cases		Private Civil Cases	
Stages of the Process	Percentage of Cases Disposed	Cumulative Percentage Disposed	Percentage of Cases Disposed	Cumulative Percentage Disposed
No Court Action	7.56	7.56*	35.33	35.33
Before Pretrial Conference	83.60	91.16*	42.85	78.18
During or After Pretrial Conference	3.63	94.79	14.41	92.59
During or After Trial	5.21	100.0	7.41	100.0

* The difference between cumulative percentages of the two groups is statistically significant at the .01 level.

private civil cases are disposed of with the minimum amount of court involvement 15/ -- either the plaintiff withdraws or the judge dismisses the case without, most likely, an evidentiary hearing. However, fewer of the inmates' cases survive the second stage which means that they may have had an evidentiary hearing but are either then dismissed or the judge accepts the magistrate's recommendation and orders relief to the inmate. What is also noteworthy is the resolution of a vast number of other civil cases at this second stage. 16/ For both groups, most cases fail to reach the pretrial conference although the judge may have been active in the process that led to the disposition. Finally, there is no statistically significant difference between the trial rates for the two groups which is the point of maximum judicial involvement.

These aggregate national statistics are helpful in understanding how and why there are different opinions concerning the relationship between Section 1983 cases and

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15/ The disposition of a case at the initial stage does not necessarily mean that the plaintiff gained no satisfaction or relief. Simply filing a case in court may be sufficient to force the defendant to compromise and make some concession.

16/ Discovery activities which occur prior to the pretrial conference may account for the resolution of the cases by the second stage. The taking of depositions, submission of interrogatories, and so forth, hearings before the court, often lead the parties to agree on a mutually satisfying settlement short of trial.

judicial workload. The data reveal complexity in the quantitative effects of Section 1983 cases on workload. Instead of simply indicating either high or low workload demands, the national level figures point to the differential effects that Section 1983 cases have on court resources. On the one hand, Section 1983 cases may be just as likely as other civil cases to have at least an evidentiary hearing and not to be dismissed before the defendant has ever responded to the lawsuit. However, to the extent that this is true, this work likely is absorbed by magistrates and pro se law clerks in Section 1983 cases and by judges in private civil cases. On the other hand, Section 1983 suits are just as likely to reach the trial stage which requires more in the way of judicial resources than the other stages. Hence, these data suggest mixed effects on the workload of the court 17/ and the demands for judicial attention. 18/

17/ The disposition of Section 1983 cases by magistrates and pro se law clerks probably accounts for its workload burden, as measured by the Federal Judicial Center. Its workload factor in 1979 was .4301 compared to an average of 1.0, hence indicating that state prisoner civil rights cases impose 57% less work than the average civil case in federal district courts (Flanders, 1980). However, this measure underestimates the court's complete workload burden because it includes only the use of judge time, not magistrate time.

18/ These nationwide data call into question the claim that courts ruthlessly dismiss Section 1983 suits and, in their

[Footnote continued]

A View from the Level of Four District Courts

According to the data from four federal district courts presented in Table 2, 19/ private civil cases are more

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18/ [Footnote continued]

haste to siphon them out of the system, overlook meritorious cases. While meritorious cases are possibly overlooked, this argument assumes what needs to be demonstrated -- independent evidence of the meritoriousness of the inmates' cases. Without that evidence, it is impossible to infer the correctness (or incorrectness) of the courts' decisions. However, the data raise a quite different point concerning the treatment given to inmates' cases. If it is the case that somewhere near 84 percent are disposed of by magistrates and pro se law clerks, does this imply that they have second-class status as compared to other civil cases? Certainly, it is the case that the magistrate does not have the same rank as the judge, who is a presidential appointee, indeed appointed for life. However, the practices of at least some magistrates indicate that the so-called second class status does not imply inferior decisionmaking. Specifically, many magistrates hold evidentiary hearings at penal institutions which not only expedites the court's response to the inmates' suit, but facilitates the calling of witnesses on behalf of the inmate. This procedure symbolically and actually indicates the federal court's willingness to intervene in correctional practices in order to determine whether an inmate has been injured because of official misconduct. Finally, federal judges, whose responsibilities encompass a wide range of cases, may regard inmates' cases as less attractive than other civil and criminal matters. In contrast, the job of magistrates is to handle inmates' cases. Their execution of this mission is reflected in detailed recommendations to judges on how the cases should be resolved. Thus, my observation is that the magistrates serve the goal of justice very well.

19/ The categories in Table 2 are disaggregated from the categories used in Table 1 to describe the nationwide patterns. Specifically, Table 1's category of "no court action" consists of Table 2's categories of "before issue joined" and "issue joined but no other court action."

[Footnote continued]

Table 2

Comparison of Disposition Patterns Between
Section 1983 Cases and
Other Private Civil Cases

U.S. District Courts for Maryland, Western District
of Virginia, Colorado and Wyoming

	Section 1983 Cases N = 4540			Private Civil Cases N = 1488		
Stage of Disposition	% of Cases	Cumulative % of Cases	Median No. of Days Days From Filing to Disposition	% of Cases	Cumulative % of Cases	Median No. of Days From Filing to Disposition
Before Issued Joined	5.7	5.7	147	17.3	17.3	181
After Motion Decided But Before Issue Joined	62.4	68.1	173	11.8	29.1	202
Issue Joined But No Other Court Action	1.8	69.9	283	16.5	45.6	387
Issued Joined and After Judgment of Court on Motion	20.0	89.9	291	17.4	63.0	341
Issued Joined and After Pretrial Conference but Before Trial	2.4	92.3	729	23.3	86.3	574
During Court or Jury Trial	1.0	93.3	423	2.8	89.1	577
After Court or Jury Trial	5.9	98.2	428	9.2	98.3	640
Other	1.8	100	403	1.7	100	275
Totals	100%	100%	235	100%	100%	393

likely to be disposed of by a dropping of the lawsuit either before the defendant has responded (17.3% v. 5.7%) or after an answer has been filed (16.5% v. 1.8%). 20/ This pattern among private civil cases is consistent with the view that, in many instances, the filing of a lawsuit is sufficient to force the defendant to concede some point that permits out of court settlement. To the extent this is an accurate characterization, the small percentages of Section 1983 cases exiting at those stages suggests that state departments of correction do not readily concede positions and that inmates do not readily withdraw their claims. 21/ Instead, some third party intervention is necessary to resolve the dispute between

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19/ [Footnote continued]

Similarly, "before pretrial conference" consists of "after motion decided but before issue joined" and "issue joined and after judgment of court on motion." "During or after pretrial conference" is the same as "issue joined and after pretrial conference but before trial." Finally, "during or after trial" combines the two trial categories in Table 2.

20/ Disposition patterns vary somewhat across the four courts, especially between Wyoming and the other three jurisdictions. Individual court patterns are presented in Appendix III.

21/ These data do not suggest that inmates are less likely to file suits simply to blow off steam than are plaintiffs in civil cases generally. (See Merry and Sibley, 1984). The minimal financial cost of litigation for inmates (e.g., they pay no filing fees, they do not experience the cost of private counsel, and they do not run the risk of having attorneys' fees imposed on them if they lose) may mean that they can afford the luxury of using a lawsuit to blow off steam for a longer period of time than other civil litigants.

the inmate and correctional officials. However, the point at which the court intervenes and resolves the case occurs, for a majority (62.4%) of the Section 1983 cases, before the department of corrections has responded to the complaint. In all four courts, the percentage of Section 1983 cases disposed of at this stage exceeds the percentage of private civil cases. This means that, for cases closed from mid-1979 to mid-1983, most Section 1983 cases were disposed of without an evidentiary hearing before a magistrate or judge. Instead, a judge dismissed the case, perhaps based on recommendations by a magistrate, pro se law clerk, or a law clerk assigned to the judge's chamber.

According to Turner (1979), the court moves to dismiss Section 1983 cases in a hasty manner. If this is true, one would expect to find that the time taken to resolve Section 1983 cases is shorter than it is for other cases because the courts do not deliberate as carefully over them. Assuming that elapsed case processing time reflects decision-making time proportionately across both Section 1983 and other civil cases, the AO's data permit a partial examination of Turner's thesis. Interestingly, the median number of days taken to dispose of the inmates' cases at this stage is 173 days. Other civil cases take 202 days to resolve in this manner. Because Turner does not indicate the criteria for what constitute hasty dispositions, his prediction is difficult to verify. However,

the one month difference in the median processing times would not seem to indicate a qualitative distinction between the reviews that two sets of cases receive. 22/

There is nearly an identical amount of cases in both groups (20% and 17.4%) that are resolved at the fourth stage, although the nature of dispositions may be quite different. Among the inmates' suits, some may be disposed of in response to a motion to dismiss filed on behalf of a corrections department. However, the category also includes cases where a judge orders relief to the inmate based on a magistrate's recommendation. The mixture of dispositional outcomes -- some for the plaintiff and others for the defendant -- does not occur in the group of other civil cases. Civil cases, that are classified within this stage, generally are disposed of on a defendant's motion to dismiss or a summary judgment motion. Unfortunately, the AO's data do not isolate the inmates' cases sufficiently to determine what percentage are resolved in favor of the plaintiffs and what percentage for the defendants at this precise stage. Moreover, the AO's data do not identify

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22/ A comparison of disposition time for cases resolved at each of the different stages indicates that Section 1983 cases take comparatively fewer days to reach termination. These data, whether viewed relatively or absolutely, question the proposition that the inordinate delay makes the federal courts an unappealing forum to inmates (Bergesen, 1972).

what percentage of cases were settled and officially terminated by the plaintiff moving to dismiss the case at this stage.

As is the case in the nationwide patterns, the district court level data indicate a higher percentage of other civil cases survive the first four stages (35% versus 11.1%) but that the respective percentages of the two groups proceeding beyond the pretrial conference to trial converge. However, there are noticeable differences between the four courts in the trial rates. For example, whereas in Maryland the trial rates for Section 1983 and other civil cases are 9.3% and 12.5% respectively, the corresponding figures for Wyoming are 2.1% and 19.8%. Hence, although the nationwide data indicated that, on average, there is no statistically significant difference in the trial rates between inmate and non-inmate cases, there is considerable variation across district courts.

The district court data reveal other points of similarity and dissimilarity between the two groups of cases. In both groups, class action suits are the rare exceptions. Fewer than two percent of the civil cases sought class action certification and fewer than one percent of Section 1983 cases were of this form. Modest amounts were recovered by the plaintiffs in both groups. In cases where awards were

made, the median amount recovered was $30,500 for the civil cases and $1,000 for the Section 1983 cases.

A fundamental difference between the groups of cases is the success that the plaintiffs enjoy in winning a court verdict. Plaintiffs in civil cases win approximately thirteen percent of the time with most cases (74%) involving a settlement or withdrawal where the winning side is not obvious and not discernible from the AO's data. In contrast, inmates experience verdicts in their favor in only one and a half percent of the time. The four courts vary in the judgments for inmates but there appears no relationship between them and the rates at which the inmates bring suits. 23/ The significance of the inmates' success rate is a matter of interpretation. The actual rate may not be vital if the goal of litigation is to put pressure on correctional institutions by giving inmates a forum to raise grievances that might otherwise be ignored or unfairly denied. Yet, as lofty a viewpoint as this may be, it tends to overlook the fact that inmates' cases tend to be dismissed in the early states of the legal process. To the extent that there is some problem underlying the suit, but one

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23/ The percentages of outcomes in favor of inmates from cases closed during 1980-1983 and the number of suits in 1983 per inmate are as follows: Maryland (1.5 and .9385); Virginia (1.1 and .1099); Colorado (3.4 and .0414); and Wyoming (0.0 and .0540). These data do not suggest that a higher winning rate for inmates results in more (or fewer) suits.

that does fit the mold of a constitutional issue, the federal courts would seem to be an inappropriate arena. 24/

A View from the Level of Individual Cases

No national data base exists from which to scan individual case files and to estimate the relative frequency of different types of substantive issues that inmates raise in their complaints. As a result, individual case files were selected from district court records and judgments made

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24/ The relatively low success rate of inmate suits raises the question of the efficacy of litigation, a subject on which there is a diversity of opinion. Milleman (1980) and Thomas (1980) conclude that legal actions are unlikely to make meaningful differences in how inmates are treated unless substantial modifications are made in the basic philosophy underlying the role of the prison in the criminal justice system (but see Resnik and Shaw, 1980:366-71). Rather than waiting for philosophical principles to change, Berkman (1979:48, 33-71, 164-66) argues that the interests of inmates can be advanced through political mobilization of inmates -- the pressing of demands through nonlegal means. On the other hand, Scheingold (1974) seemingly would advocate that inmates use litigation as a tactic in conjunction with extra-legal means to achieve their ends.

These perspectives are interesting theories of law and social change. Yet, they appear to me to be removed from the nature of cases that enter the court arena. The theories assume that there are meritorious and verifiable grievances. Yet, unless such assumed grievances never surface in court, the handling and disposition of inmates' cases in the legal arena indicates that bona fide complaints do not suffer some misbegotten fate. An alternative view to the various theories is that most inmates' grievances are not the stuff of federal cases and should be resolved elsewhere and by other techniques -- within an institution's administrative grievance mechanism.

concerning the contents of the complaints. 25/ Hence, the tentative observations presented below are exploratory, although there are certain patterns and some of them are consistent with other studies.

Types of Grievances. According to Tables 3, 4, and 5, the most frequent grievances concern medical services (e.g., lack of treatment or mistreatment), general conditions (e.g., contaminated water, excessive noise, inadequate heat, poor ventilation), assault (attacks by either correctional officers or other inmates) and access to the courts (the inmate was denied the opportunity to call an attorney, or limited in his access to the institution's law library, or the inmate found a

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25/ The Colorado data were collected expressly for this report and reflect all Section 1983 cases closed between July 1, 1982 and June 30, 1983. However, they include suits brought by both state prison and local jail inmates. Wyoming's data include all cases filed against the state's sole penitentiary between January 1, 1980 and March 6, 1985. (There were no suits filed by inmates of the men's honor camp or the women's facility during this time.) Finally, the Maryland data are taken from a previous study of state prisoner mediation (Hanson, Reynolds, Shuart, 1983). These constitute baseline data for measuring the effectiveness of mediation in resolving Section 1983 suits. Because the Maryland Attorney General's Office was one of the participants in the mediation process, the baseline data include only those cases where the defendant (i.e., state correctional official) would have been represented by the Attorney General.

Table 3

Types of Claims Raised in Section 1983 Suits
U.S. District Court for Colorado *

Type of Claim	Frequency of Claims in Cases with Single Claim	Frequency of Claims in Cases with Multiple Claims
Medical	9	5
Disciplinary Hearing	7	4
Brutality, Excessive Punishment	5	6
Violence by Other Inmates	4	6
Mail	3	5
Hair Style	3	0
Property	2	4
Transfer	2	1
General Conditions (e.g., Heat, Sanitation, Noise)	10	5
Access to the Courts	0	12
Recreation	0	3
Overcrowding	0	3
Telephone Use	0	3
Visiting Hours	0	1
Privacy	0	3
Religion	0	1
Nutrition	0	0
Other	0	7
Habeas Corpus	16	0
Number of Cases =	60	Number of Cases = 34

* Cases closed between July 1, 1982 and June 30, 1983. It excludes two Section 1983 suits filed by state mental hospital patients against that facility.

Table 4

Types of Claims Raised in Section 1983 Suits
U.S. District Court for Maryland

Type of Claim	Frequency of Claims
Medical	20
Property	14
Brutality, Excessive Punishment	11
Violence by Other Inmates	6
Transfer	5
Religion	5
Disciplinary Hearing	2
General Conditions of Confinement & Other	34
Number of Cases =	97
Cases with Multiple Claims =	72
Total Number of Cases =	169

* Cases filed between April 1, 1979 and March 31, 1980. They exclude All Section 1983 suits that did not name a state correctional official as the defendant.

Table 5

Types of Claims Raised in Section 1983 Suits
U.S. District Court for Wyoming *

Type of Claim	Frequency of Claims in Cases with Single Claim	Frequency of Claims in Cases with Multiple Claims
Medical	5	1
Disciplinary Hearing	3	1
Brutality, Excessive Punishment	2	3
Violence by Other Inmates	1	8
Mail	8	1
Hair Style	0	0
Property	0	0
Transfer	6	1
General Conditions	3	1
(e.g., Heat, Sanitation, Noise)	0	0
Access to the Courts	8	4
Recreation	0	2
Overcrowding	0	0
Telephone Use	0	1
Visiting Hours	0	0
Privacy	0	0
Religion	0	0
Nutrition	0	0
Other	8	3
Habeas Corpus	20	0
Number of Cases =	64	Number of Cases = 10

* Cases closed between January 1, 1980 and March 6, 1985. It excludes suits not filed against officials at the main penitentiary.

lack of adequate materials and forms at the law library). 26/ However, patterns in substantive content vary according to whether the cases are single issue or multiple issue cases. Despite efforts to classify complaints into a single category, many cases fail to fit into this mold. As seen in Tables 3 and 5, access to the courts is seldom the single issue in a case in Colorado, whereas cases challenging general conditions usually involve a single issue. In Wyoming, assault cases usually involve additional grievances, but grievances concerning the confiscation, opening, or censorship of mail are usually a single issue.

Caution must be exercised in drawing conclusions concerning the pattern of grievances across jurisdictions because identical time periods are not used and the Maryland and Wyoming data are a subset of all Section 1983 cases. Yet, at least three tendencies emerge concerning what subjects are and are not grieved. First, when the prisoners' movement began in the 1960s with claims by Black Muslims and others concerning deprivations of religious freedom, free speech, and other First Amendment rights, these complaints were asking prison officials

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26/ These observations are generally consistent with other reports (Turner, 1979:622-23). However, in contrast to the data in Tables 4 and 5, other analysts either do not give specific breakdowns of the frequencies of each type of claim or do not distinguish between single and multiple issue cases.

to establish uniform, nondiscriminatory policies concerning inmates' social behavior. In contrast, the types of grievances raised in the 1980s ultimately challenge the intent behind some unpleasant condition, restrictive action, or negative outcome. However, the court generally finds that correctional officials have not deliberately acted without regard to the inmates' rights. Consider the following typical cases.

(1) An inmate claims to have been the victim of excessive force and to have suffered a broken thumb as a result of a scuffle with correctional officers. The court finds, however, that the inmate had initially threatened correctional officials. During the processes of controlling the inmate, the inmate's thumb was broken. However, the inmate was sent to the infirmary as soon as possible thereafter. Unless the court finds evidence that correctional officers spontaneously attacked the inmate, it defers to prison authorities in maintaining order especially in light of the prompt attention given to the injury.

(2) A temporary holding facility is alleged to be filthy and unsanitary. The court finds that the inmate spent one night in the facility and that situation occurred because of unusually crowded conditions. The inmate was moved to cleaner facilities as soon as they were available. Moreover, the court finds that the temporary facility was more unkempt rather than unfit for occupation. Because officials acted to move the inmate out of the facility and to restore it to a suitable level as soon as possible, the court decides that the officials did not act out of indifference.

In such instances, the Court considers the issue to be whether administrative discretion was exercised in a clear disregard for the rights and interests of the inmates. Whereas

there may have been an unfortunate outcome for the inmate (e.g., a broken thumb), the correctional officials are not found to have blatantly injured the inmate. Frequently, the Court in Colorado would apply the language of Estelle v. Gamble, 429 U.S. 97 (103), which stipulates a standard for medical care grievances, to other types of grievances. Unless the Court finds prison officials acting with "deliberate indifference" toward the rights and needs of inmates, it grants prison officials the discretion to carry out the functional goals of maintaining order and security. To the extent that these sorts of issues arise in other courts, and that other courts respond in a similar manner, these data have some important implications. This sort of response by the courts suggests that many of the grievances cannot survive the essential test of whether there is evidence of a violation of a constitutional right. If complaints, as many of them do, can only point to some sort of problem that the inmate has, the critical linkage between the injury and the actions of correctional officials is missing. As a result, many of the grievances are not likely to be deemed meritorious.

Second, another aspect of the litigation common to all the jurisdictions is the relative frequency of cases whose claims are classified as "other." Although additional categories might capture some of these claims, most are very particularistic and defy obvious categorization. As an

illustration, an inmate claims that he was humiliated while being handcuffed in a public place during transport from one facility to another. Another inmate claims that he is subject to enforced idleness. Or a third says that prison officials had previously failed to act on grievances filed within the administrative structure of the facility. Because it is difficult to associate these sorts of grievances with any general standard established by the courts, these cases are likely to be dismissed because they are not deemed cognizable under Section 1983. 27/

Third, in all three jurisdictions, a noticeable number of cases raise issues other than the inadequacy of conditions-of-confinement. As seen in Tables 3 and 5, some inmates question aspects of their convictions, which are more properly habeas corpus actions, and generally name a judge, prosecutor, or public defender as the defendant. Clerks of court accept these cases even though the inmates have submitted

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27/ The range of issues brought under Section 1983 is paralleled by the habeas corpus issues brought to federal courts. Although attacks on the validity of criminal convictions in state courts are assumed to be the basis for the litigation, at least one study indicates that only a bare majority raise this issue. Many petitions allege the lack of a speedy trial, improper revocation of parole, and inadequate conditions-of-confinement (Shapiro, 1973:329). Interestingly, the largest single category of reasons for attacking the conviction was "other" which included claims of denial or a change of venue, denial of a continuance motion, and so forth.

them on Section 1983 complaint forms on the grounds that it is a magistrate's or a judge's responsibility to determine the proper form of action. In some instances, the judge or magistrate may adjust the original docket sheet and then treat the case as a habeas corpus petition, but this is not a common practice because the cases frequently fail to satisfy the requirements stipulated for habeas corpus petitions. Generally, these cases are dismissed by the court, first, for failing to satisfy essential requirements of Section 1983 (i.e., challenge the conditions-of-confinement) and then failing to satisfy a critical requirement of federal habeas corpus petitions (i.e., exhaustion of state court remedies). 28/

In light of these three patterns in the nature of Section 1983 suits, it would appear that the importance of the issues that the inmates raise lies not in the relative frequency of different formal categories, such as, privacy, medical care, or property complaints. This sort of categorization assumes that the cases are based on claims for which Section 1983 is a valid remedy. However, the facts seem

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28/ This practice conforms to the Supreme Court's decision that if the plaintiff in a civil rights action is an inmate and is seeking release from custody, but has filed a Section 1983 suit, the case must be treated as a habeas corpus petition. Presier v. Rodriguez, 411 U.S. 475 (1973).

to disconfirm this assumption, because many of the complaints raise issues that are likely to result in an early dismissal by the court for failure to state a claim appropriate to Section 1983. Moreover, other cases may formally state a valid claim, but they will unlikely be substantiated by adequate evidence -- evidence of a violation of a specific standard will be insufficient. Hence, there is a critical relationship between the kinds of issues that the prisoners raise and their processing and ultimate disposition.

Writ Writers. Another aspect of Section 1983 suits is the extent to which "writ writers" play a role in increasing the volume of litigation. One type of writ writer is the inmate who assists others in preparing, filing, and pursuing their legal cases. This phenomenon is especially difficult to document without long-term observation at specific institutions. However, a second type of writ writer is more readily observed. This is the person who files suits repeatedly, perhaps, either as a form of harassment, a way of getting back at correctional officials or a way to relieve boredom. As Table 6 indicates, there is some evidence of this sort of activity in Maryland. Yet, while a handful of inmates did file three and four suits on their own behalf within a year's time, this by itself probably could not contribute appreciably to Maryland's overall litigation rate -- the number

Table 6

Incidence of Inmates Filing Single
Versus Multiple Section 1983 Cases
U.S. District Court for Maryland

Number of Cases Filed	Number of Inmates	Percentaged of All Inmates Filing Cases	Percentage of All Cases Filed
1	121	87%	72%
2	9	7%	11%
3	6	4%	11%
4	3	2%	6%
Totals	139	100%	100%

* Cases filed between April 1, 1979 and March 31, 1980 that name a state correctional official as the defendant.

of suits per inmate -- given the state's inmate population of approximately 8,000.

In Colorado, which has fewer inmates than Maryland, the impact of writ writers is also limited. Among the 94 cases closed between July 1, 1982 and June 30, 1983, four inmates filed three suits and three inmates filed two suits apiece. This small number of writ writers had minimal effects on the state's litigation rate. Even in Wyoming, with a small inmate population, a prolific writ writer does not influence the litigation rate to a great degree. From April 26, 1979 to March 6, 1985, one inmate of the state penitentiary accounted for 19 of the 150 suits filed. Despite the disproportionate share of the caseload generated by this one inmate, even if he had not filed any suits, the annual litigation rates would have been approximately the same except for one of those years. Hence, if writ writers influence litigation, it may be in creating a culture where the norm is to sue when some problem arises rather than in single-handedly inflating the overall litigation rate.

Case Processing from the View of Individual Cases. Given the information on the types of claims raised in individual cases, it is now appropriate to return to the issues of case processing, workload, and judicial attention. An examination of individual case files should reveal more detailed aspects of prisoner litigation than was obtainable

from the nationwide or selected court level patterns. What is especially important to learn is the interrelationships among the nature of the inmates' claims, the process though which the court resolves the cases, and the outcomes of the cases. This inquiry is conducted on cases closed between July 1, 1982 and June 1, 1983 in the U.S. District Court for Colorado. A search was made of all documents in the case files using a pre-coded instrument to capture basic information on events, dates, and the participants. Additionally, an effort was made to summarize the history of each case, the eventual outcome, and the rationale behind the Court's decision.

A basic case processing diagram is laid out in Figure 1 with cases proceeding from docketing, to the defendant's answer, to evidentiary hearings, to a magistrate's recommendations, to pretrial conference and trial. There are instances in which cases were appealed to the Court of Appeals for the Tenth Circuit (the Circuit Court which has jurisdiction over Colorado) but they do not appear in Figure 1 as exiting from the district court process; only their resolution at district court level is shown.

The first point at which cases can exit the process is extremely important because it bears on Turner's thesis that courts dismiss cases promptly on grounds that the inmates are using the federal court arena for harassment purposes. Interestingly, not a single one of the cases is dismissed by

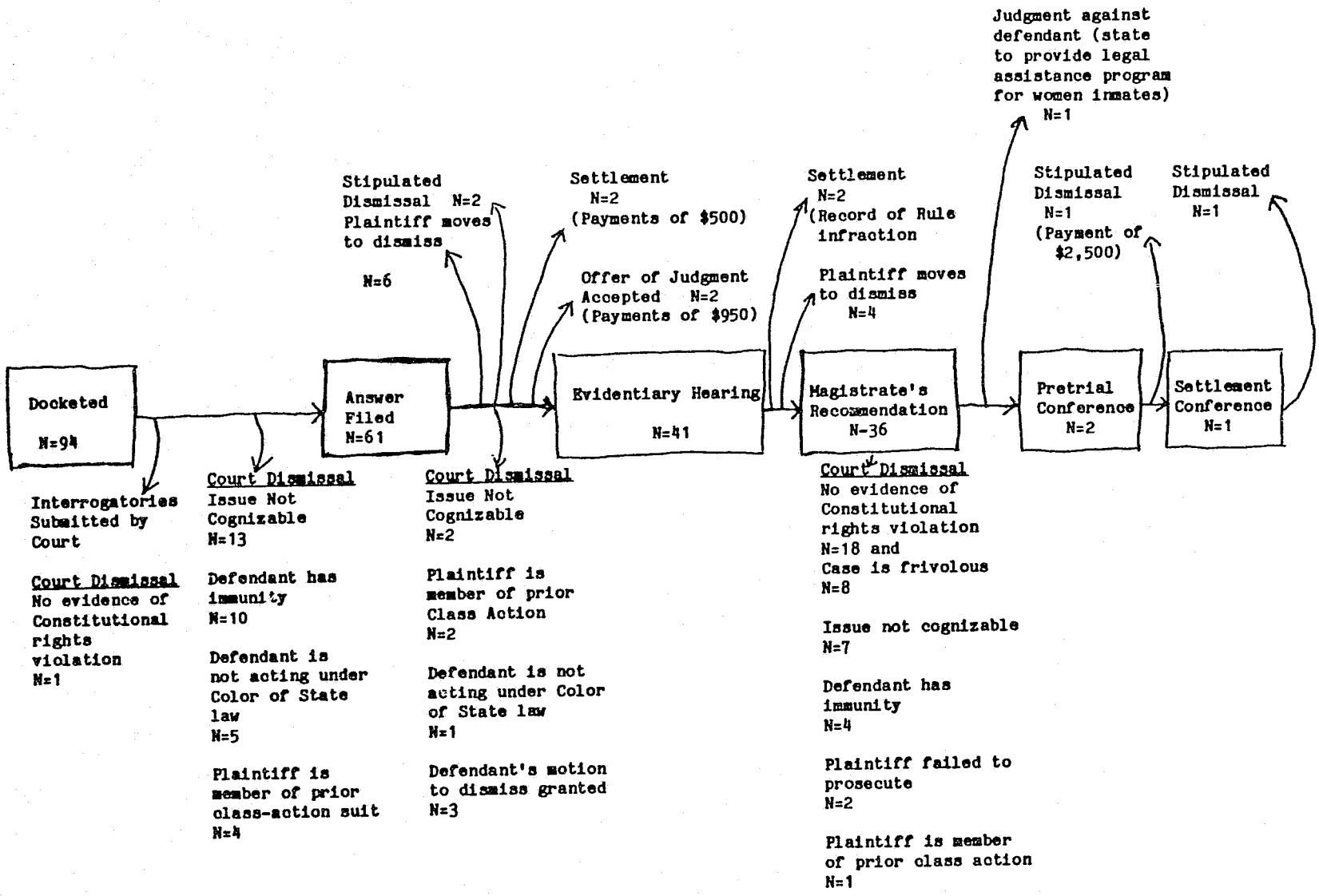

Figure I

State Prisoner Section 1983 Suits Terminated Between July 1, 1981 and June 30, 1983
U.S. District Court for Colorado

the application of 28 U.S.C. § 1915(d). There are several reasons for the total absence of the phenomenon of which Turner and others speak.

A practical consideration why courts may be motivated to avoid deciding that a case should be dismissed as frivolous is that this sort of assessment is an arguable point. Rather than deciding the issue in this way, and then having to justify this claim, a judge would decide to dismiss a case on issues of law which are more appeal-proof. It is prudent for a judge to say that a case may or may not be frivolous but that as a matter of law it fails to raise a claim for which Section 1983 provides a remedy. Besides this motivational factor, there are at least two other reasons why § 1915(d) is not applied.

One reason is that there are no obvious clues as to which suits may be frivolous or malicious. The initial complaint, as indicated previously, appears on a printed form provided by the Court. A model form, which emerged from a Federal Judicial Center (1980) sponsored effort several years ago to improve court procedures for handling inmates' cases appears to be working. The form is understandable to inmates as evidenced by their capacity to complete it. Contrary to a popular belief, the complaints generally are typed, or neatly printed, focus on one to four counts of alleged constitutional violations, and describe events from the viewpoint of a person who claims to have been injured, but are free of profanity,

illegible handwriting, and venom. Subsequent documents (e.g., motions, objections to motions filed by the defendant, objections to a magistrate's recommendations, or general correspondence with the court) are likely to be handwritten on yellow, legal-sized writing paper. Yet, even those documents tend to follow the format used by attorneys, although the inmates' reasoning may only mimic legal prose in the attempt to convince the Court that there is justification for the inmate's position.

A second reason is that the Court is able, in fact, to resolve many cases without resorting to § 1915(d). As seen from Figure 1, the reasons for the Court's dismissals are that the complaint raises issues that are not cognizable under Section 1983, the defendant is not acting under color of state law, and the plaintiff is a member of a class that has filed a suit over which the court has ongoing jurisdiction and that the inmate must intervene through that suit.

Decisions that state that the issues are not cognizable under Section 1983 cite the U.S. Supreme Court or the Court of Appeals for the Tenth Circuit as authorities in these matters. Illustrative claims which are deemed noncognizable include complaints that, if American Indians do not have to cut their hair, non-Indians do not have to cut theirs; a slippery floor resulted in a fall; and so forth. Concerning the issue of hair length, the Court indicates that

the Tenth Circuit has repeatedly denied such complaints. While the Tenth Circuit allows American Indians to maintain long hair as part of a cultural or religious custom, the Circuit has ruled that it is not discriminatory for correctional officials to regulate the hair length of non-Indians. Concerning slippery floors, this sort of complaint raises issues of negligence suitable for tort claims in state courts rather than constitutional violations to be adjudicated in federal court.

Decisions that find that the defendant is not a person acting under color of state law, as required by Section 1983, are made in instances where a state trial court judge, a prosecutor, public defender, private attorney, or federal correctional official is sued. In cases involving judges and prosecutors, the Court considers the official to be immune from liability for damages under Section 1983. Moreover, the Court frequently indicates that apart from the immunity question, these suits raise issues attacking the validity of their convictions. For example, a prosecutor allegedly discussed an aspect of an inmate's criminal record with a newspaper reporter who later published a story that mentioned this fact. The inmate claimed that the story resulted in damaging publicity and the denial of a fair trial. The Court said that, in addition not to being a violation of constitutional standards of conditions-of-confinement, state remedies had not been exhausted as required of post-conviction challenges of

convictions. In cases involving defense attorneys, the Court views these defendants as not acting under color of state law but generally informs the plaintiffs to seek relief by filing civil actions in state courts for possible malpractice (e.g., a trial attorney allegedly absconded with an inmate's initial fee payment).

Concerning dismissals because of ongoing class action suits that deal with institution-wide problems, the grounds for this type of dismissal have arisen in only the past few years. That is, the Court first had to acquire ongoing jurisdiction and then use such litigation as a channel for other complaints to go through.

It is also striking that at the second point at which cases can exit -- after the defendant has filed an answer -- none of the cases is dismissed as frivolous under § 1915(d). Instead, dismissals were made for some of the same reasons as earlier dismissals: the claims are not cognizable under Section 1983; the defendant is not acting under color of state law; and the plaintiff is a member of a class that has filed a suit over which the Court has ongoing jurisdiction. A few cases are also dismissed in response to summary judgment motions filed by the defendants and some inmates move to dismiss their case. Finally, there are some stipulated dismissals indicating possible settlements between the parties, although the case

files are not always clear as to what are the terms of settlement.

Additional cases are dismissed during or immediately after an evidentiary hearing before a magistrate. These hearings are held either at correctional facilities where they arose (or at a local courthouse in the case of suits brought by jail inmates) or at the U.S. District Courthouse in Denver.

Generally, the hearings are scheduled at correctional facilities when the complaint raises several issues that would be clear constitutional violations if true. The hearings last from a few minutes (e.g., the plaintiff does not appear because of incarceration at another facility outside the state) to several hours, with an average of 1.5 hours. These hearings serve both to prompt settlements as evidenced by plaintiff's motions to dismiss and to give the magistrate first-hand knowledge of the facts.

Interestingly, it is at this point of the process that the issue of frivolousness or maliciousness arises. Among these dispositions, several are based on a magistrate's recommendation to dismiss because the alleged constitutional violations had no basis in fact and that the suits are deemed as tactics to harass corrections officials. These recommendations were not rendered lightly. Most of them involve hearings at the institutions and are reported in extensive analyses of the claims, the facts, and the law. In

some instances, the magistrate recommends the awarding of attorneys' fees to the defendant because of the needless expense inflicted by the case. While an award of attorneys' fees was made in only one instance, the judges accepted the recommended dismissals in all cases.

However, frivolousness is not used in a sweeping manner without regard to the specifics of each case. Some cases are dismissed because the facts are not as alleged or the plaintiff failed to present sufficient evidence at the hearing. Additional grounds for dismissal include some now familiar themes -- the issues are not cognizable under Section 1983, the defendant has qualified immunity, and the plaintiff is a member of a class that has a suit over which the Court has ongoing jurisdiction.

For virtually all of the cases, they go no further than the magistrate's recommendation and eventually a court order by a judge. In some instances, the inmate gains some concession (e.g., expungement of a rule infraction from his record). However, the cases generally are dismissed by the Court because the inmate raises an issue that is noncognizable under Section 1983, sues a person who is not liable under Section 1983, or fails to produce evidence to support the alleged violations. Those sorts of cases do not require the more complex procedures of pretrial conferences or lengthy trials.

The few exceptions to this pattern include cases which involve an intricate history of events. For example, consider the case on Figure 1 which appears to exit on a stipulated dismissal with a $2500 payment to the plaintiff. This case initially was dismissed by the Court because the defendant was a federal correctional official and was considered to not be acting under color of state law. According to the complaint, the warden of a federal correctional institution failed to protect the inmate from violence by another prisoner. The inmate alleged he had been severely cut on the face by another prisoner.

The judge's decision to dismiss the case was appealed to the Tenth Circuit. At the appellate level, the Circuit Court said that this case perhaps qualified under the Bivens remedy available to federal prisoners. The Tenth Circuit ruled that the District Court should be lenient in interpreting whether the form of action is correct in pro se cases (citing Haines v. Kerner, 404 U.S. 519 (1972). Believing that the District Court judge had made too strict an interpretation, the lower court's decision was reversed and the case remanded. Once back at the District Court, the case was set for a pretrial conference. After conference was held and the case set for trial, a settlement was reached.

In summary, the individual case data tend to raise doubts concerning the thesis of Turner and others. Quick

dismissals on the grounds that cases are, on their face, frivolous or malicious are not a common practice. Documentation from more case files in other courts over longer periods of time is necessary to falsify this thesis but the available data have rendered it suspect. A more accurate view is that inmates' cases which satisfy the legal requirements of Section 1983 are given an opportunity to present evidence and be judged on their merits. Unless one considers the magistrate's role to be deficient in some aspect, a reasonable conclusion is that the cases, by and large, do not have adequate substantiation, and, therefore, are dismissed. Where there is some substance to the claim, the correction department reaches some settlement with the inmate. Hence, it is difficult to maintain the proposition that inmates fare poorly in the treatment of their cases because courts have other pressing matters to which they prefer to attend.

The Role of the Magistrates

One important aspect of how the courts handle Section 1983 suits is the role of federal magistrates. Certainly, the general use of magistrates in the federal system varies from jurisdiction to jurisdiction and even within a given court. Some magistrates conduct a wide range of civil and criminal proceedings -- motion hearings, evidentiary hearings, status conferences, discovery conferences, and trials with the consent

of the litigants in civil cases. The variety of tasks performed by magistrates has been conceptualized in a recent study as related to the method by which cases are assigned to magistrates (e.g., randomly, at the discretion of individual judges, by a chief magistrate, by a judge with whom they are paired).

Yet, regardless of the method of assignment, Section 1983 cases are almost always assigned, along with habeas corpus petitions, to magistrates in a majority of the courts across the country (Seron, 1983:49, 54-5). There are districts (e.g., the Northern District of California) where prisoner litigation is almost never assigned, but this rare instance likely reflects the fact that the Northern District of California has one of the lowest ratios of prisoner cases to civil litigation in the country.

In most districts, magistrates receive Section 1983 cases at the time they are filed. Again, regardless of the general method of assignment (e.g., random, individual judge's discretion, or by a chief magistrate), magistrates begin their work at the moment the case is docketed (Seron, 1983:37). Hence, there is more uniformity in the magistrate's responsibility in prisoner litigation than in other civil or criminal cases.

These national scope generalizations are complemented by in-depth case studies of nine district courts in a

another study conducted by Seron (1985). Both studies are interested in two larger questions: (1) what should be the complete set of magistrates' responsibilities, and (2) what work do magistrates actually perform beyond the handling of prisoner petitions. The current research on Section 1983 cases may add some information, however, to this more general discussion by offering a glimpse of the magistrates' functions in Colorado, Maryland, Western District of Virginia, and Wyoming. (These jurisdictions are not included in the Federal Judicial Center's nine court study.) The results of semi-structured interviews with the nine magistrates in these courts who handle prisoner petitions are summarized in the form of three basic propositions. 29/

First, although Section 1983 suits reflect the frustrations of a group of people who have limited education and minimal legal assistance, the magistrates in all four courts indicate that they are satisfied that they are able to get to the bottom on the inmate's suit. Despite the fact that some observers characterize Section 1983 suits as opaque,

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29/ Three magistrates now handle prisoner petitions in Colorado, although they were all given to one individual until recently. Three of the five full-time magistrates handle prisoner cases in Maryland. In the Western District of Virginia both of the magistrates handle prisoner litigation. Wyoming assigns prisoner cases to the clerk of court who also serves as a magistrate.

illegible, factually murky, the magistrates claim a high degree of confidence in knowing what the facts and points of law are when they make their recommendations. Magistrates can and do rely on interrogatories, status conferences prior to evidentiary hearings, and hearings themselves to elucidate the facts. 30/ The cases in which the pleadings are difficult to comprehend are instances where the plaintiff gives a chronological account of virtually everything surrounding the alleged injury. However, such unfocused recitations are seen with greater clarity through the use of one of the three devices mentioned above. For this reason, the magistrates share the viewpoint that meritorious cases receive attention and are not overlooked because of a crushing caseload.

Second, federal courts of appeal have ruled that detailed attention be given to cases if there is any possible factual basis to the claim, which, if true, could raise a constitutional issue. Although some circuits may be more

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30/ A fourth procedure is available in at least some circuits. The magistrate or judge may issue an order to the defendants that they conduct a review of the grievance and seek to resolve it administratively. Additionally, they may ask the state correctional officials to submit a special report in the conduct of their investigation to determine if the alleged facts are relevant, accurate, and subject to a bona fide dispute. This procedure, which has been sanctioned at least in the Tenth Circuit (Martinez v. Aaron, 570 F.2d 317 (10th Cir. 1978)), has been used on a regular basis in the U.S. District Court for Wyoming.

expansive than others in their interpretations of what constitutes factual conflict, all circuit courts insist that evidentiary hearings be held in cases where the allegation, if true, could conceivably imply a constitutional violation. See, e.g., Slavin v. Curry, 574 F.2d 1256, 1260 (5th Cir. 1978); Bennet v. Passic, 545 F.2d 1260, 1261 (10th Cir. 1976); and the Supreme Court's position in Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). These circuit court decisions have been internalized by the magistrates. Instead of seeking ways to dismiss cases on the pleadings, they carefully determine if there is any factual validity to the allegations. Independent indication of the close attention paid to the question of facts is the limited number of summary motions put forward by defense counsel. Defense counsel do not submit such motions, in lieu of answers, because magistrates will not recommend granting them in most instances. The reason is that, if there are affidavits attached to the motion that are in conflict with affidavits produced by the inmate, there is a factual controversy and an evidentiary hearing is required. 31/

31/ Some magistrates decline to hold hearings at correctional facilities for several reasons, including the lack of security and decorum. What probably determines the location of the hearings is the opportunity for time and travel savings and the volume of cases. If there is a considerable distance between the prison and the courthouse, and there is a backlog of cases, most magistrates would at least consider holding sessions at the correctional institutions.

Third, the specialization of magistrates raises a management issue for the courts. As a general principle of social behavior, the more knowledge an individual has, the more decisive is the person's decisionmaking. Conversely, limited knowledge results in more cautious decisions. Magistrates, in a real sense, are judges working for other judges. Yet, is their discretion in managing Section 1983 suits commensurate with their expertise in searching out the issues and keeping abreast of changing correctional law? If Section 1983 suits are to be within the province of magistrates, courts may well profit from incorporating the magistrates' working knowledge into refining how this aspect of the system should operate.

CHAPTER III

CORRELATES OF SECTION 1983 SUITS

BACKGROUND

Knowing that state prisoner civil rights cases appreciably add to the federal courts' caseload and workload levels raises the question of how and why more suits are filed in some states than in others. That is, why do some correctional systems experience more suits? Is it simply because they have more prisoners or do they operate under different circumstances -- more or fewer resources, more or fewer threats to inmate safety, more or fewer correctional officers? There is some virtue in first examining this issue from the level of state correctional systems.

Basically, it seems reasonable to determine if overall features of the conditions surrounding inmates -- prison population size, correctional resources, racial composition of the inmate population -- have effects on the inmate's probability of suing officials before analyzing more detailed characteristics of institutions and the individual inmates. The working hypothesis is that such factors are sufficiently powerful to influence the likelihood of legal cases arising, although these factors may be interrelated with variables at more micro-levels of analysis. In fact, state level factors included in this report are also used in institutional level

predictions of inmate behavior (see Farrington and Nuttall, 1980 on size and overcrowding; Jan, 1980 on overcrowding).

In this chapter, evidence is presented on the relationship between certain state level factors and the variation in volume of state prisoner civil rights cases. For each year from 1972-1983, information on a particular characteristic of a given state correctional system (e.g., number of inmate deaths, expenditures per inmate, incarceration rate) is matched with the state's number of lawsuits per inmate. Tests are conducted to determine which macro-level factors are related to the volume of litigation and which ones are not.

RESEARCH FRAMEWORK

The study of the relationship between characteristics of state correctional systems and their environments is in the tradition of the state public policy analysis literature developed by Dye, Hawkins, Sharkansky and others. Their approach in accounting for differences in budgetary allocations between states was to correlate expenditures with different features of the states' social and political systems. A basic result of their work was that general social and economic circumstances (e.g., per capita income) accounted for spending patterns whereas political factors (e.g., party competition, degree of malapportionment) explained very little. A more

micro-level perspective was required in order to see connections between political variables and public policy across the states.

Using this sort of framework, the results of the current research can serve three purposes. First, observed connections between state level characteristics and litigation will indicate whether the design and operation of state correctional systems influence the likelihood of suits challenging conditions. It is important to know from both theoretical and policy perspectives if basis structural features of governmental institutions are related to litigation challenging those institutions. Second, if some state level factors emerge as important determinants, this information will help point to what parallel factors at the institutional and individual inmate levels should be explored in future research in order to gain a more thorough understanding. Third, negative results that indicate the lack of a connection between state characteristics and litigation may spur research on the institutional and individual levels of analysis.

DATA AND METHODS

The analysis of what state level factors predict the rate of inmate litigation relies on the Annual Reports of the Administrative Office of the U.S. Courts for measures of the absolute number of Section 1983 cases filed by state prisoners

in a given year. In states with multiple district courts, a state filing figure is aggregated from the different district courts. Secondary sources are used to gather information on state level correctional system characteristics. These include reports of the Bureau of Justice Statistics, the Sourcebook of Criminal Justice Systems, and a variety of other references. Where available, these data are coded for the years 1972-1983. A listing of the exact measures and the data sources is found in Appendix IV.

For each year between 1972-1983, step-wise multiple regression is used to identify the combination of characteristics that best explain the variation in the volume of cases for each year. The selection of specific measures of the independent and dependent variables is guided by the tradition of macro-level political sociology literature on prisons (e.g, Jacobs, 1983:17-23). Six sets of variables, which seem appropriate to test as predictors of litigation volume, are briefly described below.

Prison Population Size and Composition. Litigation may increase as a linear function of the sheer number of inmates. Alternatively, as correctional systems become larger, a culture may develop among the inmates that encourages the filing of suits with disproportionately more suits in the larger state correctional systems. In addition to size, the racial, ethnic, and sexual composition of the system may have independent effects. Racial and ethnic diversity may lead to certain problems, e.g., inmate violence, which, in turn, leads to litigation claiming inadequate security. The size of the female population is an important consideration in order to

verify the claim that women do not file suits in proportion to their numbers (Alpert, 1982). Finally, the types of offenses committed by the inmates may play a role. Inmates who expect to be in prison for long periods of time may be more willing to file suits than those who expect to serve short sentences. The inmate serving a lengthy sentence may also have the time to develop a working knowledge of legal standards and procedures (e.g., Flanagan, 1981:218). On the basis of these propositions, the following variables are included: (1) Total number of inmates, (2) Proportion of black inmates, (3) Proportion of Hispanic inmates, (4) Proportion of female inmates, (5) Percentage of inmates sentenced for violent crime, and (6) Percentage of inmates sentenced for murder and attempted murder.

Expenditures. One reason why some states may spend more money for corrections than do other states is to achieve the best possible conditions. If the conditions are adequate, then fewer problems may emerge. One of the ultimate consequences may be a lower volume of litigation. However, a counter-argument is advocated by correctional experts who believe that resource allocations to prisons are so uniformly low that few services are provided (Hawkins, 1976:48-51). If there is limited variation in this factor, this means it will not account for variations in litigation volume. To test these competing viewpoints, the following factors are included: (7) Total direct expenditures per inmate, (8) Correctional payroll per inmate, (9) Minimum salaries for correctional officers, and (10) Minimum salaries for correctional superintendents.

Structure and Services. Central to prison operations is the manner in which the inmates are housed. Density of population not only has become a legal issue but overcrowding is a concept linked to social behavior. One would expect that as correctional systems become more crowded, individual complaints aimed at a variety of specific problems would increase, in addition to potential class action suits. An alternative notion is that absolute size is a more critical factor. Large systems, even if they are not crowded, have certain effects on inmate behavior, possibly including litigation (see Jan, 1980).

Availability of key services such as medical and psychological treatment would seem to be a possible deterrent to suits. Because many prisons need such services (Churgin, 1980:296), their provision may alleviate the stress and conflict that possibly breeds litigation. Yet, if these services are generally inadequate in every state (Churgin, 1980), lack of variation in these services means that these factors will not explain variation in litigation. To capture the effects of these factors, the following variables are included: (11) Degree of overcrowding, (12) Percentage of inmates over rated capacity, (13) Number of nurses per inmate, and (14) Number of psychiatrists per inmate.

Control and Violence. The relationship of correctional officers to inmates is important for the maintenance of security and how inmates regard their incarceration (see, e.g., Hawkins, 1976:80-107). Both the racial composition of the line staff and their availability may be essential ingredients in the system's capacity to maintain order. However, some evidence suggests minority guards are even more punitive than their white colleagues in their attitudes (see Jacobs and Kraft, 1978) and, therefore, racial balance in staff member composition may do no more to resolve inmate complaints than imbalance.

A related consideration is how well physical security is maintained, including the prevention of deaths because of self-inflicted injuries or attacks by other inmates. The incidence of death may be a sign of the neglect and abuse within prisons that spurs litigation. For these reasons, the following variables are included: (15) Percentage of correctional officers that are minority group members, (16) Ratio of inmates to staff members, (17) Death rate among inmates, excluding executions, (18) Death rate among inmates excluding executions and natural causes.

Litigiousness. A common view of inmates is that they are encouraged by a cadre of lawyers who seek to establish new law by advocating inmates' rights. Yet, a very small percentage (3-5%) of inmates who bring suits against the state actually have legal representation (see Hanson, Reynolds, and Shuart, 1983). Systematic evidence also indicates that the supply of legal services, at least in some

jurisdictions, may actually siphon off potentially frivolous suits because the inmates are told when they have a case and when they did not (Alpert and Miller, 1978; Alpert, Finney, and Short, 1978).

However, there are grounds for believing that some correctional systems may be more litigious than others. Inmates' expectations toward the adherence to constitutional standards by correctional officials may vary from state to state or region to region. Most importantly, some systems may develop a legal culture, independent of prison conditions, which encourages inmates to file all sorts of suits as a way of confronting officials -- the normally superior official is brought down to the inmate's level in the courtroom. Finally, success may breed success. If a correctional system has been sued successfully, inmates may decide to press their grievances in court because of an increased subjective expectation of winning. For these reasons, the following factors are taken into account: (19) The number of habeas corpus cases filed per inmate, (20) The number of writs of mandamus filed per inmate, (21) The net civil caseload per inmate, (22) The number of court orders and decrees against state institutions. 32/

Environment. The extent to which a state is willing to commit offenders to institutions may affect the nature of the institutions which, in turn, leads to certain reactions by inmates, including litigation. For example, a more punitive policy toward incarceration may also mean a harsher policy of confinement, which in turn, leads to more suits. Different commitment policies for white offenders and non-white offenders may also lead to the development of attitudes that question prison authorities and that view litigation as a political weapon (Berkman, 1979). For these reasons, the following factors are

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32/ Undoubtedly, writ writers -- inmates who file multiple complaints -- can affect the volume of litigation in a given jurisdiction. Although this is an unmeasured variable in this analysis, I assume that it is randomly distributed across the states. From my experience, this is not an unrealistic assumption. I have found in several states that approximately ten percent of inmates filing suits account for 20-30 percent of the total number of suits filed.

incorporated into the analysis: (23) Total incarceration rate, (24) Incarceration rate of black inmates, and (25) Incarceration rate of Hispanic inmates.

The dependent variable is the volume of Section 1983 suits. Volume is measured in terms of the number of cases filed per inmate and is interpreted as the probability of a law suit being filed.

The specific technique used to analyze the relationships between these twenty-five characteristics and the volume of litigation is multiple regression analysis. This analysis is conducted on data gathered for the years 1972-1983, although some years have incomplete information. 33/

FINDINGS

State Level Correlates

The results of the quantitative analyses are basically twofold: First, many of the hypothesized predictors are marginally related to litigation when each one is correlated separately with the likelihood of lawsuits. The observed connections generally are not statistically significant and, for this reason, are not reported here.

33/ 1972 is the starting point because that is the first year that the AO isolated the number of Section 1983 cases for each U.S. District Court.

Second, the results of the step-wise multiple regression analysis suggest that the probability of Section 1983 suits being filed is generally the product of litigiousness although medical services, death rates, and extent of overcrowding, do occasionally contribute to the explanation of case filings. As seen in Table 7, which presents the factors in order of their explanatory power for each year between 1972 and 1983, the different indicators of litigiousness persistently appear among the most important variables. 34/

34/ Multiple regression identifies the combination of factors that provide the most complete, yet nonoverlapping, explanation of variation in the dependent variable. The total amount of variation in the dependent variable that is accounted for by the factors is represented by R^2, which can range from 0.0 to 1.0. In Table 6, one can see that the combinations of factors for certain years, e.g., 1978, provide for a more complete explanation than those associated with other years, e.g., 1974 -- the R^2 in 1978 is much higher than it is in 1974. Second, the contribution that every factor makes to the explained variation is a given year is also identified. As an illustration, in 1974, the number of habeas corpus petitions per inmate explains 33 percent of the variation and the number of writs of mandamus per inmate explains 7 percent. The third statistic is the regression coefficient which indicates the direction and amount of change in the dependent variable associated with a unit change in a given explanatory factor. For example, in 1974, for every increase in the probability of a habeas corpus case being filed, there is a 58 percent chance that a Section 1983 case will also be filed. Finally, if any one of the twenty-five independent variables is not included in Table 6, this means that it did not explain any more of the variation in civil rights litigation than was already accounted for by the factors that are listed in the Table.

Table 7
Characteristics of State Correctional Systems that
Best Explain Variation in the Number of
Section 1983 Suits File Per Inmate
1972 - 1983

Year	State Correctional System Characteristics	Probability of Section 1983 Filings for a Unit Change in Each Characteristic	Variation Explained by Each Characteristic	Variation Explained All Characteristics (R^2)
1972	Number of Writs of Mandamus Per Inmate	.47	.22	
	Incarceration Rate of All Inmates	.62	.16	
	Number of Habeas Corpus Petitions Per Inmate	.71	.12	
	Total Number of Inmates	.75	.06	
	Correctional Payroll Per Inmate	.78	.04	.60
1973	Death Rate Among Inmates Due to Natural Causes, Suicides, Accidents and Attacks by Other Inmates	.25	.06	.06
1974	Number of Writs of Mandumus Per Inmate	.58	.33	
	Number of Habeas Corpus Petitions Per Inmates	.28	.07	.40
1975	Number of Writs of Mandamus Per Inmate	.57	.32	
	Number of Habeas Corpus Petitions Per Inmate	.29	.08	
	Private Civil Caseload Minus Civil Rights Cases	.25	.06	.46
1976	Number of Habeas Corpus Petitions Per Inmate	.47	.22	
	Percentage of Women Inmates	-.33	.11	.33
1977	Number of Habeas Corpus Petitions per Inmate	.43	.18	
	Correctional Payroll Per Inmate	.29	.11	
	Percentage of Inmates Sentenced for Murder or Attempted Murder	.28	.07	.36

Table 7 (cont'd)

1978	Number of Nurses per Inmate	.65	.42	
	Number of Habeas Corpus Petitions Per Inmate	.49	.24	
	Percentage of Minority Correctional Officers	.37	.12	
	Percentage of Inmates Over Capacity	.24	.05	
	Percentage of Inmates Sentenced for Violent Offenses	.22	.04	.87
1979	Number of Habeas Corpus Petitions Per Inmate	.54	.30	
	Death Rate Among Inmates Because of Suicides, Accidents, and Attacks by Other Inmates	.46	.19	.49
1980	Number of Habeas Corpus Petitions Per Inmate	.75	.57	
	Number of Nurses Per Inmate	.55	.28	.85
1981	Number of Nurses Per Inmate	.46	.21	
	Number of Habeas Corpus Petitions Per Inmate	.64	.20	.41
1982	Number of Habeas Corpus Petitions Per Inmate	.42	.18	
	Minimum Salaries of Correctional Officers	.29	.08	
	Percentage of Black Inmates	.26	.07	.33
1983	Number of Habeas Corpus	.39	.15	.15

Litigiousness is an attitude toward the value of litigation as a means to gain relief for alleged deprivation. Some inmates consider litigation as a necessary, appropriate, and fulfilling method of resolving grievances whereas others "lump it" or choose some other route to resolution. However, because litigiousness is used in other studies to describe individuals' behavior, it is necessary to clarify how the concept is used in this research in order to avoid the criticism of circularity -- that litigiousness explains litigiousness.

The conceptualization of litigiousness in this research rests on two assumptions. First, the willingness to sue is independent of social and economic conditions. Litigiousness is an attitude or predisposition that individuals or groups of individuals may share even though they have different objective characteristics. Conversely, groups with similar objective characteristics may have different degrees of litigiousness. Second, at the aggregate level, litigiousness is not necessarily uniform across all states, or more specifically, state correctional systems. Some states may have the same degree of litigiousness, but this phenomenon is not a constant factor across all states. Hence, the fact that litigiousness is the best predictor of Section 1983 suits cannot be dismissed by saying that it is circular or that it confirms the obvious. In fact, this finding should be nonobvious to virtually all of the participants in the legal process. Based on a review of the literature and discussions with expert observers, a common

viewpoint is that "poor" conditions generate suits and that "good" conditions avert suits. The central research finding of this chapter raises doubt concerning the truthfulness of this supposed connection between objective conditions and suits.

This finding means, for example, that two state correctional systems with the same physical facilities, population systems, and degree of physical security, but with different degrees of litigiousness among inmates, will have different volumes of Section 1983 litigation. If one system has more litigious inmates, then that system will have more Section 1983 suits despite their similarity on other dimensions. In fact, a state could have a higher Section 1983 litigation rate while being viewed as somewhat more "progressive" on certain dimensions than another state. The technique used to analyze the data is ideally suited to test such a hypothesis; regression analysis sorts out the importance of each factor while simultaneously controlling the effects of all other variables. It determines the independent effect of each variable and the independent effect of the most highly explanatory combination of variables.

However, these basic findings must be qualified because of imprecision in the measurement of the objective conditions. Perhaps, not all of the relevant conditions were identified and those that were identified were not measured correctly and completely. Both points undoubtedly are true to

some extent, but in the absence of other evidence that links objective conditions to litigation, these measurement considerations do not logically or convincingly overturn the current results. Rather, they underscore the need for future research to develop more refined data, hypotheses, and techniques of analysis.

The basic deficiency of the current research is that litigiousness is not measured independently of the filing of litigation. Herein lies the basic weakness of using habeas corpus filings as an indicator of litigiousness. Future sociological and psychological research are needed to unravel the components of litigiousness, to develop indexes of litigiousness, and to retest this study's organizing propositions. Nevertheless, some tentative interpretations at this time may encourage more refined research in the future. I would first like to discuss litigiousness at the state level of analysis in a manner consistent with the basic thrust of this chapter. After exploring state level factors that may be connected to litigiousness, I will turn briefly to a consideration of individual level factors that may help to explain litigiousness.

Generally speaking, inmates will be more predisposed to file lawsuits concerning their grievances with prison life under two conditions: (1) There is no viable alternative to filing the suit, and (2) The inmates have very little sense

whether their grievances are meritorious. In these circumstances, when inmates believe that correctional officials have caused them injury, they will avail themselves of Section 1983 and claim that the officials' actions (e.g., stolen property) or inactions (e.g., lack of medical services) require some sort of relief (e.g., a new radio, a back brace). Hence, the lawsuit, rather than an informal adjustment process, becomes an instrumental and an expressive activity for coping with injuries and the frustrations associated with confinement.

There is some state level evidence that corroborates this interpretation of the regression analyses. After the U.S. Supreme Court decided that inmates could sue for protection of their constitutional rights, state correctional departments mounted mechanisms to resolve grievances administratively. In some instances, an administrative remedy procedure was established with formal grievance forms, grievance coordinators, required time schedules for the initiation of and the response to grievances, and an appeal ladder. Other states adopted alternative mechanisms such as, inmate councils, ombudsmen, inmate grievance commissions and some adopted a combination of different forms.

There is very little systematic evidence on the effectiveness of every mechanism in place but a separate examination of selected states undertaken by the author and others offers some pertinent information. In a study intended

to describe alternative dispute resolution mechanisms for inmate complaints, we found that states that had low numbers of civil rights suits per inmate had established grievance procedures that effectively managed to resolve complaints (Cole, Hanson, Silbert, 1984). For example, North Dakota, Maine, South Carolina, Massachusetts and Minnesota, which are five of the ten states with the lowest ratios, were among the first in the country to establish comprehensive statewide mechanisms. In contrast, among the ten states with the largest ratios, West Virginia had no grievance procedure as of 1983, Alabama established its procedure only in 1982, Virginia operated with a weak ombudsman until 1983, when it introduced a statewide grievance procedure, Arizona established a mechanism in 1981, and Rhode Island enacted a remedy procedure in 1980. 35/ The significance of the date of the grievance mechanism's establishment is that it may reflect the degree of

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35/ In 1983, the ten states with the lowest number of Section 1983 suits filed in U.S. District Courts per inmate were North Dakota (.0049), Maine (.0055), Alaska (.0065), South Carolina (.0082), South Dakota (.0206), Indiana (.0224), Massachusetts (.0232), Hawaii (.0235), Ohio (.0242), and Minnesota (.0260) and the states with the highest number were Delaware (.1971), Virginia (.1124), West Virginia (.0985), Montana (.0986), Pennsylvania (.0937), Iowa (.0810), Alabama (.0809), Louisiana (.0804), Rhode Island (.0672) and Arizona (.0661). California's low number of suits per inmate (.0141) is because inmates file their cases in state rather than federal courts. As a result, California does not confirm (or disconfirm) the hypothesized linkage between grievance mechanisms and the number of suits per inmate because of its noncomparability.

state policy commitment to resolving inmates' complaints fairly and expeditiously. 36/ Those states that desired to resolve complaints short of litigation are likely to have been among the first to put appropriate administrative procedures in place while those states that gave low priority to this problem area are likely to be among the last to adopt such procedures. 37/

Although this evidence on grievance mechanisms suggests their importance, the averting of litigation will not be achieved by mechanically establishing such units across the country. States may have mechanisms with similar rules and regulations governing the processing of inmates' complaints but vary in their degree of success in resolving the complaints. Structure alone is not the "solution" -- there needs to be a linkage between the detailed work of grievance personnel at the

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36/ Delaware established a procedure in 1978 but failed to include many of the basic provisions associated with grievance mechanisms -- written responses to inmates' complaints, time limits for responses, priority processing of emergency grievances, and safeguards to avoid reprisals against inmates. These omissions may undermine its viability and explain Delaware's high rate of suits to inmates.

37/ Early adoption of a grievance is not the only key to effectiveness, however. For example, Ohio, which had a low ratio of suits to inmates in 1983, had previously experienced a growing trend in litigation. During the years 1975-1979, the total number of cases steadily increased and then decreased in 1980 and thereafter. Other analysts attribute this change in litigation volume to the simultaneous strengthening of the correctional system's grievance mechanism which siphoned off many complaints that would have otherwise gone to court (McCoy, 1981).

institutions who are responding to specific complaints and the officials (governor, legislators, correctional department administrators) who have the more general goal of averting litigation. This linkage, however, can be achieved under different types of grievance mechanisms.

For example, in South Carolina, which operates with an administrative remedy procedure, the Attorney General's Office and the Department of Corrections work together so that correctional administrators inform grievance personnel what constitutes bona fide grievances in light of the changing nature of correctional law. As a result, grievance coordinators in institutions resolve grievances before they are transformed into lawsuits. On the other hand, in Minnesota, the Ombudsman for Corrections has access to the Governor's Office and the State Legislature. At the end of each year, the Ombudsman's Office prepares a detailed report on how grievances were handled and what general policy changes resulted from its efforts.

Certainly, South Carolina and Minnesota are different on many social, economic, and political dimensions. In fact, their grievance mechanisms involve different procedures. Yet, the low ratios of suits to inmates in both states are attributable, in part, to the fact that a policy commitment by state officials to resolve grievances without resort to litigation is connected with the daily activities of staff

members who have the responsibilities of coping with the inmates' problems. This relationship involves one of effective two-way communication between state officials and grievance personnel. The personnel realize that the performance of their responsibilities are of interest to the broader concerns of state officials, and the officials reinforce that concern through systematic monitoring and feedback.

Finally, it must be noted that variation in the volume of Section 1983 suits is not a result of a single state level factor. As Table 7 reveals, contributing to the volume of litigation are death rates, degree of overcrowding, expenditures, and service levels. 38/ Because they do not appear as regularly as the litigiousness measures, they are complementary in their effects rather than primary sources of litigation. 39/ However, they must be recognized and factored

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38/ It is interesting to note that the variable of prison population size is not among the combination of key factors for any year. One reason may be because size was standardized like the other factors. The number of inmates for every state was divided by the largest sized correctional system for each year in order to avoid allowing population size to have much more variability than all the independent variables. Differences in variability could have made the results a statistical artifact rather than capturing true sources of variation in Section 1983 litigation. For this reason, the salaries of correctional officers and superintendents were standardized in similar ways.

39/ Although the characteristics of state correctional systems may not have direct effects on the probability of Section 1983

[Footnote continued]

into the explanation. Two of the factors seem especially noteworthy. They are the death rates and the expenditure and service levels. Concerning the death rates, if litigation arises out of conditions marked by suicides and fatal beatings, this casts doubt on the belief that all inmates' cases are patently minor gripes. More effort is warranted in order to understand this variable in greater detail and monitor its level over time.

Concerning expenditures and services, it is striking that these factors are positively related to litigation

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39/ [Footnote continued]

cases, there are other possible linkages. One plausible connection is that factors such as expenditures, services, and incarceration rates, determine the degree of litigiousness which, in turn, influences the likelihood of Section 1983 filings. That is, litigiousness is hypothesized to be an intervening factor between objective characteristics of state correctional systems and the volume of Section 1983 cases. Despite the theoretical merit of this hypothesis, there is little empirical support for it. When the objective factors were tested as predictors of litigiousness, in only three of the twelve years were the observed relationships statistically significant at the .05 level. In those years where the relationships are nonrandom, the percentage of inmates sentenced for violent offenses and the subgroup of those sentenced for murder or attempted murder, are among the best explanations of variation in habeas corpus filings, as might be expected. This expectation is based on the premise that offenders sentenced for serious crimes are more likely to contest the charges against them (e.g., go to trial rather than plea bargain) and then contest their convictions (i.e., file appeals) after adjudicated. Overall, however, it appears that litigiousness directly effects variation in the probability of Section 1983 suits and that other factors episodically enter the picture.

volume. The higher the level of expenditures and services per inmate, the greater the likelihood of litigation. These results may be the product of rising expectations among inmates. The theory of rising expectations applied in the prison context (Alpert, Huff, Crouch, 1984) suggests that when services are generally nonexistent, their supply at a later point in time may stimulate new complaints rather than satisfy unmet needs. For example, when nurses are not available, there are no obvious standards of performance. Once nurses are provided, however, inmates can then ask that more nurses be available, that there be more stations, and that nurses by available for longer hours. Hence, one should not expect an increase in expenditures to reduce complaints, at least in the shortrun.

Individual Level Correlates

It is important to know whether state administrative remedies may provide viable alternatives to inmates who would otherwise litigate their grievances in federal court. If the court is the only option for inmates, it is understandable that correctional systems that have more resources, correctional personnel and training programs than other systems may experience as many Section 1983 complaints as the other systems.

Nevertheless, there remains the question of how and why one indicator of litigiousness -- the volume of habeas

corpus petitions -- varies from state to state. That is, if litigiousness explains the volume of Section 1983 suits, what brings about litigiousness? As indicated above, attempts to correlate objective factors of state correctional systems with habeas corpus filings are persistently discouraging (supra). Yet, given the nature of habeas corpus petitions, one might not expect institutional factors to play a role in determining their volume. Because habeas corpus petitions challenge the validity of convictions rather than the conditions-of-confinement, the causal factors may be unrelated to variations in the quality of prison life.

Information on noninstitutional factors compiled by the Bureau of Justice Statistics (BJS) may help provide a partial explanation. BJS has undertaken nationwide surveys of prison inmates over the past several years in which thousands of prisoners were asked a battery of questions. Among the many issues is the question, "Have you ever appealed your conviction?" The affirmative and negative responses to this question provide a crude measure of whether the inmates have filed habeas corpus petitions. It is a crude measure because state criminal defendants can directly appeal their convictions to state appellate courts, as well as to attack their convictions in federal court because of federal constitutional violations (i.e., file a federal habeas corpus petition). Hence, some of the inmates responding affirmatively to this

question posed in the BJS survey may have filed an appeal in a state court system but not filed a federal habeas corpus petition.

Despite the limitations of this question as a measure of federal habeas corpus activity, it merits some consideration because it offers virtually the only relevant data at the individual inmate level. Because habeas corpus petitions were found to be unrelated to situational variables (supra, footnote 39), and because they are more theoretically linked to individual level variables, the BJS data seem to be a reasonable area of inquiry.

The remaining portion of this chapter presents the results of cross-tabulations between the question of whether an appeal has been filed and several other factors. Only the most highly related factors are discussed in this report although during the research process many more factors were examined.

The critical finding is that the inmate's type of conviction is the best predictor of whether the conviction is appealed. If inmates are classified according to whether they were convicted by trial or a guilty plea, then the data indicate that very few of those who pled guilty appealed their conviction, and most of those who went to trial subsequently

filed an appeal. The degree of association between the two variables is .54, as seen in Table 8. 40/

However, the strength of the relationship between the type of conviction and the filing of an appeal varies according to subgroups of the total inmate population. That is, the trial triggers a subsequent appeal more frequently for certain groups of inmates than for others. This is illustrated by the results in Table 9, which take several other factors into account.

According to Table 9, there is a stronger association between the type of conviction and the filing of an appeal for inmates who fall into one of the following subgroups: have committed a violent offense, have done their own legal research, are married, are older than most inmates,and are male. For inmates in each of these categories, if one knows their type of conviction, one can more accurately predict whether they will have filed a post-conviction appeal or not.

A basic interpretation of these data is that litigiousness may be created by a cluster of inmates who have a

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40/ The phi-coefficient is a measure of association between two categorical factors. It ranges in value from 0.0 to 1.0. The closer the relationship between the factors, the higher the value of phi. As a practical matter, values between 0.0 and .3 indicate weak associations, values between .31 and .6 indicate moderate associations, and associations and values above .61 indicate strong associations.

Table 8

Association Between Type of Conviction
and the Filing of An Appeal
State Prison Inmates

	Type of Conviction *	
	Trial	Guilty Plea
Appealed Conviction? **		
Yes	2,444	1,340
No	941	6,500
	Phi = .535	N = 11,255

* The question was: "Were you found guilty or did you plead guilty?"

** The question was: "Have you appealed or are you currently appealing your conviction?"

Data Source: Bureau of Justice Statistics, Survey of Inmates of State Correctional Facilities, 1979

Table 9

Degree of Association (Phi-Square) Between
Type of Conviction and the Filing of Appeals
State Prison Inmates

Admitted in 1979		Admitted in 1978 or 1977		Admitted Prior to 1977	
Sex		Sex		Sex	
Male	Female	Male	Female	Male	Female
.484	.389	.544	.494	.550	.504
N=3096	N=1144	N=3600	N=780	N=2318	N=201

Admitted in 1979			Admitted in 1978 or 1977			Admitted Prior to 1977		
Age (Years)			Age (Years)			Age (Years)		
14-25	26-34	35+	14-25	26-34	35+	14-25	26-34	35+
.416	.464	.513	.489	.558	.555	.507	.571	.509

Admitted in 1979			Admitted in 1978 or 1977			Admitted Prior to 1977		
Marital Status			Marital Status			Marital Status		
Married	Formerly Married	Never Married	Married	Formerly Married	Never Married	Married	Formerly Married	Never Married
.476	.454	.446	.527	.570	.511	.596	.513	.547
N=1119	N=1074	N=2047	N=929	N=1231	N=2220	N=429	N=899	N=1271

Admitted in 1979			Admitted in 1978 or 1977			Admitted Prior to 1977		
Type of Offense			Type of Offense			Type of Offense		
Violent Offender	Property Offender	Drug or Other Offender	Violent Offender	Property Offender	Drug or Other Offender	Violent Offender	Property Offender	Drug or Other Offender
.548	.3718	.385	.563	.493	.500	.534	.476	.492
N=1108	N=1787	N=464	N=1758	N=1325	N=366	N=1667	N=317	N=105

Has Used the Services of A Lawyer

Admitted in 1979		Admitted in 1978 or 1977		Admitted Prior to 1977	
Used Legal Materials	Did Not Use	Used Legal Materials	Did Not Use	Used Legal Materials	Did Not Use
.423 N=3113	.473 N=1127	.528 N=2672	.530 N=1708	.529 N=1376	.528 N=1223

Used A Lawyer	Did Not Use	Did Own Research	Used A Lawyer	Did Not Use	Did Own Research	Used A Lawyer	Did Not Use	Did Own Research
.464 N=1162	.478 N=2877	.381 N=196	.464 N=1527	.495 N=2590	.648 N=257	.515 N=1120	.527 N=1306	.563 N=167

The respective questions on sex, age, marital status, type of offense, use of legal materials, use of a lawyer were as follows:

Sex: Interviewer identification

Age: "What is your age today?"

Marital Status: "Are you now married, widowed, divorced, separated, or have ever been married?"

Offense: "For what offenses were you sentenced?" The respondents include only those who were not on parole, probation or conditional release at the time of admission to prison.

Legal Materials: "Since your admission have you used any law books or other legal materials provided by this prison?"

Lawyer: "Have you worked with a lawyer, law student, or any other person formally trained in legal matters?"

Conviction: "Were you found guilty or did you plead guilty?"

Appeal: "Have you appealed or are you currently appealing your conviction?"

Data Source: Bureau of Justice Statistics, Survey of Inmates of Correctional Facilities, 1979.

considerable stake in overturning their convictions -- avoiding long sentences -- and the willingness to persevere in looking for issues that offer a means to achieve this end. These individuals may be placed in administrative segregation where they have time to devise plans on how they might sue themselves out of the institution. At rockbottom, these sorts of individuals may create a culture of litigiousness that extends from challenges of convictions to challenges of confinement. If there are no alternatives to litigation, this culture becomes more widespread and other inmates begin to share these attitudes and file Section 1983 suits when they have grievances. Every state correctional system probably has its share of inmates who can build such a local legal culture of litigiousness. However, some states have managed to construct meaningful alternatives to litigation and others have not. Thus, the degree to which a state formulates an alternative is associated with its Section 1983 filing rate.

This working hypothesis is of policy significance because it suggests how state decisionmakers can adjust their correctional systems to cope with the increasing volume of Section 1983 suits. It suggests what factors under their control can be put into place to avert the consequences of litigiousness among inmates. For this reason, future research could profitably test this relationship in order to strengthen the empirical foundation of policy recommendations.

CHAPTER IV

CONCLUSIONS AND POLICY IMPLICATIONS

This study confirms many of the ideas and working propositions in the field of prisoner litigation. A basic notion to which most observers hold is that there is a large volume of Section 1983 suits filed each year. That subject is described in some detail in Appendix I. However, this report offers additional findings in areas where there may be disagreement or uncertainty concerning the consequences of the litigation. The purpose of this chapter is to recapitulate some of those findings and then to suggest their implications for policymaking. There are five major findings:

> (1) The federal district courts give prompt and thorough review to Section 1983 suits. Cases filed by inmates tend to be handled by the courts in much the same manner as other private civil litigation. The arguments that courts act in a hasty, perfunctory, or ruthless manner in disposing of inmates' cases are not supported by the data.
>
> (2) Federal district courts have adapted to an increasing caseload, including that portion of the workload attributable to Section 1983 suits, by allowing magistrates to play a major role in their resolution. Because most suits are resolved prior to trial, magistrates in most district courts probably handle the majority of Section 1983 suits with final orders being issued by federal judges.
>
> (3) Most Section 1983 suits are dismissed on the courts' motions but not because they are deemed frivolous on the basis of the pleadings. Rather, cases are dismissed because inmates fail

either to name a defendant acting under color of state law, or to raise issues cognizable under Section 1983, or to offer evidence of a constitutional rights violation.

(4) Objective characteristics of the state correctional system, such as per prisoner expenditures, prison population size, and racial composition, have very little to do with the rate at which states are sued under Section 1983. States with similar characteristics have different filing rates and states with different characteristics have similar rates.

(5) Inmate attitudes toward litigation as a means of securing relief for alleged deprivations account for interstate variation in the level of Section 1983 suits. Some inmates are more predisposed to file suits than others. At the state level, the extent to which the attitude of litigiousness exists is positively and strongly related to each correctional system's volume of Section 1983 litigation.

These principal conclusions have policy implications when viewed in the context of the social cost of litigation. Social costs are the resources used in the process of resolving these cases in federal court. Certainly, there are benefits to the inmates through the removal of inhumane practices and unconstitutional policies. However, these benefits arise in a limited number of cases if we consider in how few instances inmates have a meritorious case that prevails. Because inmates are awarded damages in only one to two percent of the cases, and reach some settlement in a few more cases, basic social

cost factors must be weighed against these benefits. An illustrative list of those factors are as follows:

(1) The cost to state attorneys general (or private counsel) in defending state officials.

(2) The cost to correctional officials in attending hearings, preparing answers, submitting to depositions, and transporting inmates to and from the courthouse.

(3) The cost to federal magistrates and chambers' staff members (secretary, law clerk) in the time spent handling cases through the pretrial stages.

(4) The time spent by federal district court judges and chambers' staff members (secretary, law clerk, deputy courtroom clerk) preparing for and conducting trials.

(5) The time spent by federal circuit court judges and staff members hearing appeals.

(6) The administrative cost to the federal district and circuit courts in the maintenance and processing of court documents.

The total cost of these factors is not known, but a conservative estimate is that it may approach 100 million dollars annually. 41/ Because the total budget of the entire

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41/ This estimate is based on the following calculations: According to Virginia officials, the time spent by the Attorney General's office in defending state correctional officials per case is $1500 (Interview with James Sisk, Manager of the Virginia Grievance Procedure, Richmond, Virginia, March 12, 1983). Actually, this figure seems somewhat low when compared to the fees received by private attorneys who sometimes represent correctional officials. Even if it is reasonably accurate, a nationwide projection reveals that the costs may reach 30 million dollars in 1985. (Assume that there are

[Footnote continued]

federal judiciary is only 900 million dollars, the social cost to using the courts is significant. For this reason, if

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41/ [Footnote continued]

20,000 Section 1983 suits filed in federal court in 1985. Then 20,000 x $1500 = 30,000,000)

Added to this factor are the costs to the department of corrections. Even if only half the suits require a hearing at the courthouse, the transportation costs alone (i.e. vehicular costs, the time spent by security personnel traveling to and from the hearing) may equal $750 per case. On a nationwide basis that would equal $7,500,000.

Although there are no measures of magistrates' time spent on Section 1983 cases, I found in my research that the equivalent of one-third of all magistrates in a given court is devoted to Section 1983 cases. Assuming that this represents approximately the equivalent of 100 of the nation's 300 magistrates, a projected cost of $12,000,000 seems reasonable. (If the annual salary and fringe benefit cost of a magistrate and staff members is $120,000 per year, then $120,000 x 100 = $12,000,000).

The cost of district court judicial time is very difficult to estimate but we do know that not every case is handled solely by magistrates. Given that the amount of time consumed by Section 1983 cases in pretrial and trial is, perhaps, only 1/20 of total available work time, the cost is still considerable. (Section 1983 cases are approximately 1/20 of the civil and criminal caseload.) If, on average, 1/20 of the time spent by the nation's approximately 600 district court judges and their staff members is devoted to Section 1983 cases the cost is appreciable. (Assume that the annual salary and fringe benefit cost of a judge and staff is $200,000 per year, then .05 x 600 x $200,000 = $60,000,000).

Combining these costs, the estimated total is $99,500,000. If we knew more, we could add the district court's administrative cost and the parallel judicial and administrative costs to the circuit courts of appeal. However, even without precise estimates in these two areas, we can conclude they only add to an already significant social cost.

grievances that now are resolved in court could be handled informally, or through a grievance mechanism, considerable savings will likely result without sacrificing the rights of inmates. On this basis, the following five basic recommendations are offered:

First, and foremost, judges, policymakers, and others should recognize that if nothing is done to change the current situation, the trend is for Section 1983 cases to increase. Inmates' expectations are too closely attached to litigation to result in a reduction in Section 1983 cases without some external action. Consequently, although the courts have adapted to the increasing workload by the effective use of magistrates, there are limits to this allocation of scarce resources in the future.

Second, governors, state legislators, state attorneys general, and correctional officials should meet together to design, implement, and evaluate their administrative remedy procedures. Despite the fact that each of the different groups would benefit from less Section 1983 litigation, there are few signs of collective decision-making on what needs to be done in terms of achieving fair and effective grievance resolution short of litigation. Currently, each group deliberates on this issue within the boundaries of its own office or professional association and discusses possible alternatives in relative isolation. Hence, a basic step is for representatives from

each of the institutions to come together at national, regional and state levels and to begin a meaningful dialogue.

For example, it would likely prove useful for all of the interested parties in each federal district court jurisdiction -- a governor's representative, the chairpersons of the state legislature's judiciary committees, the assistant attorney general in charge of correctional litigation, the state correctional commissioner, the warden of the state's largest prison in the district, the counsel for the state department of corrections, and a representative from the American Civil Liberties Union or other pro-inmate litigation group, to discuss what might be gained by seeking certification of the state's grievance mechanism under the terms of the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA) (Public Law 96-247). Without subscribing to every aspect of CRIPA, it seems fair to say that this represents the only attempt at a national policy toward prisoner litigation. 42/ However,

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42/ A brief examination of proposed and actual approaches to resolving inmate grievances indicates that they frequently are put forward with the narrow objective of reducing the federal court's burden. One approach is to deter suits through the request for partial payment of filing fees. This has been tried but the available evidence does not indicate significant success in reducing litigation (Willging, 1984). Another approach is to constrain the range of issues that are deemed cognizable -- limit the scope of correctional practices that are deemed subject to constitutional standards. This involves

[Footnote continued]

someone has to take the initiative of organizing and mobilizing the various participants in the legal process in order to set a

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42/ [Footnote continued]

deferring more to prison officials in defining acceptable practices in particular situations. Although some observers view recent U.S. Supreme Court decisions in this light (Stover, 1985) the flood of complaints continues.

A third approach is to require exhaustion of state court remedies. While this would remove part of the burden, at least for the federal judiciary, the net gain is uncertain. State court resources would, perhaps, simply be substituted for federal court resources and the costs to state attorneys general and department of corrections would likely remain the same.

A fourth approach is to mediate or arbitrate these cases. Neutral experts at negotiation are believed to have the skills necessary to bring the opposing sides together in the same manner as they have done in landlord-tenant disputes, divorce and child custody contests, and so forth. Despite the initial appeal of this strategy, the limited empirical evidence suggests that inmates and either prison officials or their attorneys cannot easily reach agreement on what is subject to mediation and thus persistently fail to achieve substantive settlements. (Cole, Hanson, and Silbert, 1982; Hanson, Reynolds, and Shuart, 1983).

In contrast to these more limited approaches, a comprehensive effort is reflected in the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA). Basically, CRIPA fashioned a remedy that was to avert costly litigation, without sacrificing the rights of inmates or the quality of the process of dispute resolution. The approach taken consists of two interrelated procedures. First, the Attorney General of the United States is granted authority to certify a state's administrative inmate grievance mechanism if it satisfies certain standards. Second, if the grievance mechanism is certified, federal courts can require inmates to exhaust this remedy before acting on their complaints. Additionally, the Act gives the U.S. Attorney General the authority to intervene

[Footnote continued]

policy discussion in motion. An appropriate person would be the governor or attorney general. If state executives exercise leadership in this area, there could at least be a thorough review of the merits and limitations of CRIPA. This would then lead either to an application for certification or to the formulation of a different approach.

Third, the Attorney General of the U.S. should focus the attention of key state decision-makers on CRIPA. Because it is the Attorney General's responsibility to certify state grievance mechanisms, he should clarify the requirements for certification and the potential benefits to the states. These benefits include cost savings and a strengthened role for the states in resolving state prisoner grievances. Through speeches and letters to the associations of state officials, the Attorney General should indicate what is at stake in resolving prisoner grievances short of litigation.

42/ [Footnote continued]

on behalf of inmates in situations where prison conditions are egregious or flagrant. A key objective of the certification process is to minimize federal court involvement in the resolution process and to maximize certified state involvement. By requiring "administrative" solutions to "administrative" problems, it is believed many grievances can be effectively resolved and litigation averted. Hence, on a theoretical level, it is an ambitious effort to confront a problem with a solution that achieves both uniformity in general guidelines and allows for diversity in specific applications.

Fourth, the nature, causes, and consequences of litigiousness among inmates should be on the agenda of future research. What are its sociological and psychological components? What is its pattern of development? What options available to correctional administrators can cope with this phenomenon?

Fifth, research should begin to determine how the Civil Rights of Institutionalized Persons Act of 1980 might be used more widely and more effectively. Is the certification process too slow and cumbersome? What are the incentives and disincentives for the states to gain certification? Should the legislation and corresponding federal regulations be modified?

APPENDIX I

Section 1983 Suits and the Federal Court Caseload

Section 1983 cases are one of several types of complaints that inmates of penal institutions can raise in the court arena. They can also file petitions for writs of habeas corpus and writs of mandamus. Similar rights are available to inmates of local jails and federal prisons. Hence, the impact of Section 1983 cases on the courts should be examined in conjunction with other types of inmate litigation. Additionally, the volume of inmate litigation should be measured in terms of the cases filed in the U.S. District Courts and those that subsequently have been appealed to the U.S. Courts of Appeals. Basic descriptive information on caseload levels is presented below using records maintained by the Administrative Office of the U.S. Courts (AO). 1/

1/ There are four basic limitations to the AO's record-keeping categories for the purpose of this study. First, any case filed by an inmate that is not a Section 1983 case, habeas corpus case, writ of mandamus, or motion to vacate is grouped together with all other cases of that type in the AO's aggregate statistics. For example, a Freedom of Information Act (FOIA) case filed by an inmate is classified with all other FOIA cases. This means that use of district or circuit court data will not isolate the complete set of inmate inspired litigation, although the amount of the missing information is likely to be small. Second, the AO's category of "state

[Footnote continued]

Section 1983 cases demonstrate a distinctive pattern in the nationwide caseload levels for the U.S. District Courts as seen in Table I-1. Between 1966 and 1984, they rose from less than a third of one percent of the caseload to seven percent, while the percentages for other types of inmates' cases decreased. Only federal inmate civil rights cases show a

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1/ [Footnote continued]

prisoner civil rights cases" includes Section 1983 actions as well as complaints claiming racial discrimination pursuant to Sections 1985 and 1986. However, the vast majority are Section 1983 cases. Third, the AO's category includes filings from both state prison and local jail inmates. The state inmate cases predominate, but this category cannot be attributed exclusively to them. Use of these data as a measure of state prisoner civil rights cases undoubtedly involves measurement error at all levels of analysis -- national, state, and district court. Yet, without using these data, any cross-district or cross-state comparisons would be virtually impossible because the time required to search individual case records stored at the courthouses would be prohibitive. Third, the designation of cases is imperfect. If a state inmate completes the necessary forms to file a Section 1983 case, the court dockets the case as such even though a judge or magistrate may later deem it to be some other type of case, e.g., habeas corpus petition. The court may note this change in its own files and then treat the case as a habeas matter. However, it is still recorded as a Section 1983 case on the copy of the docket sheet forwarded to the AO. The AO staff members may change the case's classification after reading the description of the case. However, some descriptions may be overlooked (or ambiguously worded) and cases thus remain misclassified.

TABLE I-1

Inmate Litigation's Percentage of the
Nationwide Federal Court Civil Caseload*

U.S. District Courts

	Percentage of Civil Caseload* in 1966	Percentage of Civil Caseload* in 1984
State Inmate's Suits		
Civil Rights	.31	7.31
Habeas Corpus	7.31	3.53
Writ of Mandamus	.97	.08
	Percentage of Civil Caseload* in 1966	Percentage of Civil Caseload* in 1984
Federal Inmates' Suits		
Civil Rights	.02	.33
Habeas Corpus	1.43	.79
Motion to Vacate Sentence	1.22	.54

U.S. Court of Appeals

	Percentage of Civil Caseload** in 1967	Percentage of Civil Caseload*** in 1984
State Inmates' Suits		
Civil Rights	3.89	12.87
Habeas Corpus	20.43	7.41
	Percentage of Civil Caseload*** in 1972	Percentage of Civil Caseload** in 1984
Federal Inmates' Suits		
Civil Rights	.46	1.35
Habeas Corpus	2.79	2.13

*The first year that the Administrative Office of the U.S. courts isolated the nationwide aggregate number of state prisoner civil rights cases at the District Court level was 1966 and 1967 was the first year they were so identified at the circuit level.

*The total District Court civil caseload was 99,602 in 1966 and 261,485 in 1984.

**The total circuit civil caseload was 4,147 in 1967 and 21,725 in 1984.

***The total circuit civil caseload was 8,399 in 1972.

Source: Annual Reports of the Administrative Office of the U.S. Courts, 1966-1984.

parallel increase but their relative impact, even in 1984, was still limited. 2/

An inspection of the annual trend in Section 1983 case filings, which is presented in Figure I-1 reveals a pattern of gradually increasing shares of the caseload in the 1960s, followed by steeper increases in the 1970s, and fluctuations in the 1980s. Although habeas corpus cases filed by state inmates constitute the second largest absolute number of suits, their effect on the caseload is the mirror image of the Section 1983 pattern -- large, growing shares in the 1960s followed by a sharp decline in the 1970s to a more gradual decline in the 1980s.

The pattern in the circuit courts parallels that exhibited in the district courts. Section 1983 cases increased their share of the caseload over time while the percentage of habeas corpus cases has diminished. Both federal inmates' challenges to conditions-of-confinement and habeas corpus cases have remained relatively small portions of the court caseload over the past several years.

On the basis of these data, Section 1983 cases clearly have affected the federal district courts' caseloads. In both

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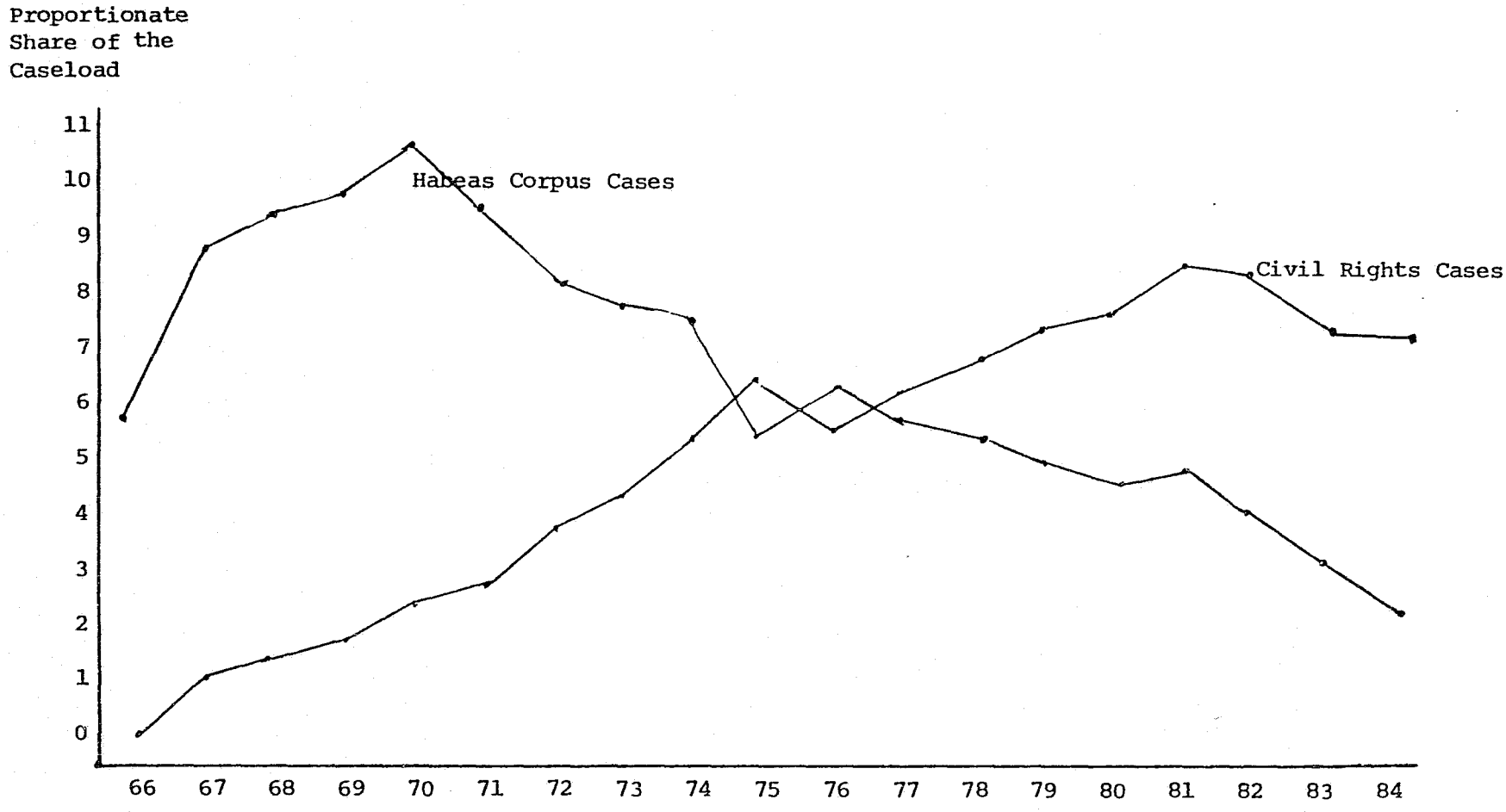
2/ The first year that the AO isolated the nationwide aggregate number of Section 1983 cases at the district court level in 1966. 1967 is the first year they were so identified at the circuit level.

Figure I-1

State Prisoner Civil Rights and Habeas Corpus Cases'
Shares of the U. S. District Court Civil Caseloads
1966-84



absolute and relative terms, they have grown more rapidly than other types of inmate litigation. Growing from 218 cases in 1966 to 18,034 in 1984, these cases now constitute an appreciable share of the nationwide caseload. They have also contributed to the rising circuit caseload. Hence, an understanding of the forces behind these numbers will explain an important portion of the federal courts' business. 3/

Finally, the concentration of this segment of the court's caseload is worth noting. As indicated in Chapter I, there is some disagreement over whether these cases are a burden on the courts. This disagreement may arise because judges who have more state prisoner cases to handle may see them as a burden and those who have fewer cases may see inmate litigation as a lesser problem. For that reason, the distribution of the Section 1983 case filings across federal district courts is worth noting.

The percentage of Section 1983 cases varies across U.S. District Courts, as seen in Table I-2. In several district courts, Section 1983 cases are fewer than five percent

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3/ These caseload statistics are imprecise measures of judicial workload because different types of cases require different amounts of time to dispose of because of variability in complexity, number of parties, precedent setting potential, and so forth (Lieberman, 1984:29). Nevertheless, caseload figures are important to track because if we know the workload that is associated with certain types of cases, the number of each type is a key component in estimating workload demands.

TABLE I-2

Concentration of Section 1983
Case Filings in 90 U.S. District Courts *
1980 - 1983

Section 1983 Cases' Percentage of the Civil Caseload in U.S. District Courts	Number of U.S. District Courts with Alternative Percentages of Section 1983			
	1980	1981	1982	1983
36% - 40%	0	1	0	2
31% - 35%	2	3	4	0
26% - 30%	2	2	2	0
21% - 25%	5	5	2	8
16% - 20%	3	10	14	7
11% - 15%	18	14	7	11
6% - 10%	24	27	28	31
0% - 5%	36	28	33	31
Total Number of U.S. District Courts	90	90	90	90

* The Virgin Islands, Puerto Rico, Canal Zone and Guam.

of the caseload, while in others the figure is over fifteen percent. This sort of variation has occurred consistently over the past few years when the absolute numbers of Section 1983 filings reached the highest levels.

One implication of this pattern is that attempts to deal with the rising tide of cases need to take inter-district variations into account. Whereas Section 1983 cases are entering the judicial system nationally at an increasing pace, their share of the caseload is much greater in certain jurisdictions than in others. "Solutions" will have to be designed accordingly.

Additionally, this distribution raises the question of how and why such differences exist. Are those district courts that have the highest percentage of Section 1983 cases jurisdictions with small populations and the site of a major state correctional facility? Conversely, are those jurisdictions that have the lowest percentage of Section 1983 cases urban areas with no penal facilities? Illustrations can be chosen that lend confirmation to this hypothesis. For example, the Middle District of Louisiana fits the profile at the high end with 36 percent while the District of Columbia is at the opposite pole with 2 percent. Yet, there clearly are exceptions to this relationship, especially among the districts with small percentages of Section 1983 cases. U.S. District Courts for Minnesota, Connecticut, and South Carolina, for

example, have relatively small percentages but cannot be characterized as sparsely populated jurisdictions dominated by a large penitentiary. Hence, the lack of sound explanation for the variation in concentration levels is a reason to search for the underlying basis for the caseload differences more systematically.

APPENDIX II

Court Decisions and Legal Standards for Prisons

The standards for prisons and the legal rights of prisoners are derived from four sources: (1) U.S. Constitution, (2) state constitutions, (3) federal laws and regulations, and (4) state laws and regulations. 1/ However, most of the litigation brought by state prisoners is based on the Civil Rights Act of 1871 and involves allegations of violations of rights guaranteed by the U.S. Constitution. Those rights are based essentially on the First, Fourth, Eighth, and Fourteenth Amendments to the Constitution.

Yet, courts must balance the rights under these four amendments against the functional interests of prisons: (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 that the restrictions placed on inmates are necessary to preserve these interests. The following discussion is an overview of the major cases resulting from the balancing process.

1/ This appendix is an abridgement of chapter 3 of a monograph on dispute resolution mechanisms for prisoner grievances prepared by the author and others (Cole, Hanson, and Silbert, 1984:13-29).

The First Amendment. Generally speaking, the First Amendment has been interpreted to guarantee that inmates retain their right to express themselves on issues that concern them and to practice their own religion, although this right is limited by the reasonable exercise of precautions necessary for the maintenance of institutional order and security. 2/ Most of the litigation to date has focused on rights concerning correspondence, communication, assembly, visitation and religion, although there have been some cases relating to access to the press.

The burden is on the inmate to prove that exercise of the claimed right does not present a danger or that the institution's response to security concerns is exaggerated. 3/ Courts routinely have deferred to corrections officials in their attempts to regulate communications within the institution, visitation, and receipt of mail and publications. 4/ If a less restrictive alternative is

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2/ Pell v. Procunier, 417 U.S. 817, 822 (1974); Jones v. North Carolina Prisoner's Labor Union, Inc., 433 U.S. 119, 125 (1977).

3/ St. Claire v. Cuyler, 634 F.2d 109, 115 (3d Cir. 1980), citing Pell v. Procunier, 417 U.S. 817, 827 (1974).

4/ Nickens v. White, 622 F.2d 967 (8th Cir. 1980) (prison may prohibit circulation of protest petition on grounds of security concerns where prisoners have alternative means to communicate

[Footnote continued]

available, however, a given practice may be struck down. Thus, for example, a rule prohibiting nude photographs of wives and girlfriends has been found unconstitutional. Because it was not the receipt of such photographs that would disrupt institutional order, but rather the fact that other inmates might be aroused by their display, the Court felt that a rule which prevented inmates from displaying their photographs in their cells would have been preferable. 5/ Similarly, a court struck down the practice of punishing inmates for writing inflammatory political tracts because officials could have merely confiscated the material. 6/ The administrator who

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4/ [Footnote continued]

grievances), cert. denied, 449 U.S. 1004 (1980); Guajardo v. Estelle, 580 F.2d 748 (5th Cir. 1978) (right of officials to reject mail on grounds of security or obscenity upheld); Kincaid v. Rusk, 670 F.2d 737 (7th Cir. 1982) (prison may restrict receipt of hardcover books by pretrial detainees on grounds of security). See Bell v. Wolfish, 441 U.S. 520, 548-52 (1979) (ban on "non-publisher" hardcover books upheld); Vodicka v. Phelps, 624 F.2d 569 (5th Cir. 1980) (ban on receipt of newsletter permissible on grounds of institutional security); White v. Keller, 588 F.2d 913 (4th Cir. 1978) (prison may suspend visitation privileges for limited period after contraband discovered immediately following visit); Ramos v. Lamm, 639 F.2d 559 (10th Cir. 1980) (reasonable restrictions on visitation upheld), cert. denied, 450 U.S. 1041 (1980).

5/ Pepperling v. Crist, 678 F.2d 787, 790-791 (9th Cir. 1982).

6/ Sostre v. McGinnis, 442 F.2d 178, 202-203 (2d Cir. 1971), cert. denied, 404 U.S. 1049 (1972); but see Davidson v. Scully, 694 F.2d 50 (2d Cir. 1982) (prison mail regulations irrational as applied to outgoing mail to public officials and civil liberties group).

cannot reasonably link a particular restriction to a legitimate institutional purpose should look for ways to resolve the grievance before it gets to court. Similarly, if there is a less restrictive way to accomplish a legitimate curtailment of the right of expression, its implementation may enable the administrator to avert a potentially meritorious lawsuit.

Petitions based on claimed denials of freedom of religion have formed a large portion of the First Amendment filings under Section 1983. Inmates have fared somewhat better with such claims than with alleged denials of freedom of speech or expression. In balancing an inmate's desire to practice a religious belief with the needs of the institution, the administrator first must ask whether the inmate is sincere in the belief and whether the purported "religion" is in fact a religion at all. These are often difficult determinations to make. Even if both questions are answered affirmatively, however, the religious practice still must be balanced against the recognized legitimate institutional interests in order, security and rehabilitation.

Moreover, policies that favor certain conventional religions over other, less traditional beliefs, may also run afoul of both the First Amendment's guarantee of religious freedom and the Fourteenth Amendment's prohibition against denial of equal protection of the laws. As examples, inmates have been held to have the right to be served meals consistent

with the dietary laws of their religions, 7/ the right to correspond with religious leaders and to receive and possess religious literature, 8/ the right to wear beards, if part of a religious belief, 9/ and the right to assemble for religious services. 10/ Predicting what a court will do in any given situation is difficult, of course, but the administrator can go a long way toward preventing costly litigation over these issues by making a common-sense analysis of the apparent sincerity of the inmate's belief, the authenticity of the religion and the extent to which the particular practice truly conflicts with the institution's interest in order, security and rehabilitation.

The Fourth Amendment. Inmates 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 institution's interest in security and order, and

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7/ Barnett v. Rodger, 410 F.2d 995, 1003 (D.C. Cir. 1969) (impediments to serving meals consistent with religious dietary laws must be compelling).

8/ Walker v. Blackwell, 411 F.2d 23, 29 (5th Cir. 1969).

9/ Monroe v. Bombard, 422 F. Supp. 211, 218 (S.D.N.Y. 1976).

10/ Walker v. Blackwell, 411 F.2d 23, 24 (5th Cir. 1969); Cooper v. Pate, 382 F.2d 518, 522 (7th Cir. 1967).

courts generally have been loathe to confer a very extensive right to privacy on inmates. 11/ Body searches have been more difficult for corrections 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. 12/ On the other hand, body cavity searches have been upheld when part of a clear-cut policy demonstrably related to an identifiable legitimate institutional need, 13/ but not when intentionally humiliating or degrading. 14/

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

12/ 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).

13/ 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).

14/ 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).

To illustrate the fine balance needed to justify an intrusion on the right to privacy, some courts have rules that staff members of one sex may not supervise inmates of the opposite sex during bathing, use of the toilet, and strip searches. 15/ In these cases, the inconvenience of requiring staff members of the same sex as the inmate was held not to constitute a legitimate institutional reason justifying the intrusion. On the other hand, the practice of allowing female guards to "pat down" male prisoners, excluding the genital area, has been upheld. 16/ 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 administrators must respond to each complaint individually.

The Eighth Amendment. The Eighth Amendment, as applied to the states through the Fourteenth, specifically limits the extent to which states can punish convicts, proscribing excessive fines and those punishments that are "cruel and unusual." There is no question that the Eighth

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15/ Lee v. Downs, 641 F.2d 1117, 1120 (4th Cir. 1981); Cumbey v. Meachum, 684 F.2d 712 (10th Cir. 1982).

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

Amendment is meant to apply, almost exclusively, to inmates serving sentences. It is the interpretation of this amendment, and the determination of whether specific conditions and practices meet its standards, that have provided the courts with some of their most intriguing issues. 17/

Judicial attempts to give substance to the words "cruel and unusual" have used such phrases as "depriv[ations] . . . of the minimal civilized measure of life's necessities" 18/ and "wanton and unnecessary infliction of pain . . . grossly disproportionate to the severity of the crime warranting imprisonment." 19/ Since the Supreme Court's decision in Rhodes v. Chapman, several lower courts have held

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17/ The definition of "cruel and unusual" is elusive and controversial. Moreover, deprivations that individually might not be found to be cruel and unusual could, in combination with others, be ruled unconstitutional. See, e.g., Rhodes v. Chapman, 452 U.S. 337, 347 (1982). It is such broad "totality of conditions" claims that have been at the heart of the major class action lawsuits brought by litigators such as the American Civil Liberties Union National Prison Project, NAACP Legal Defense Fund, and others. Some of these, if successful, would require massive institution or system-wide changes at enormous financial expense. Under these circumstances, the administrator may be personally unable to respond in a fashion that could successfully avert the litigation. The ultimate response must come from the legislature, which often will not act until a court has ordered that changes be made. In such cases, any negotiation that might prevent filing of the suit should be undertaken by the agency's counsel.

18/ Rhodes v. Chapman, 452 U.S. 337, 347 (1982).

19/ Id., citing Gregg v. Georgia, 428 U.S. 153, 173 (1976).

that the Eighth Amendment requires the provision of "basic human needs," including "adequate food, clothing, shelter, sanitation, medical care and personal safety." 20/ The Court has repeatedly recognized "evolving standards of decency," rather than the standards in vogue at the time of the passage of the Eighth Amendment, in determining constitutionality. 21/

Individual inmates have claimed a wide variety of institutional conditions and practices to be violative of the Eighth Amendment. Although most such petitions are summarily dismissed, courts have upheld Eighth Amendment challenges to such conditions and practices as:

> . . . deliberate indifference to medical needs, as distinguished from mere negligence or malpractice; 22/
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> . . . assaults on inmates by prison

20/ Hoptowit v. Ray, 682 F.2d 1237, 1258 (9th Cir. 1982), reh'g en banc denied (1982); Capps v. Atiyeh, 559 F. Supp. 894 (D. Oregon 1982).

21/ Rhodes v. Chapman, 452 U.S. 337, 346 (1982), citing Trop v. Dulles, 356 U.S. 86, 101 (1958).

22/ Estelle v. Gamble, 429 U.S. 97, 103 (1976). See also, Harris v. Chanclor, 537 F.2d 203 (5th Cir. 1976); Zaczek v. Hutto, 642 F.2d 74 (4th Cir. 1981); cf. Layne v. Vinzant, 657 F.2d 468 (1st Cir. 1981) (substandard treatment to the point of malpractice not the basis for liability); Ramos v. Lamm, 639 F.2d 559, 575 (10th Cir. 1980) (negligence or inadvertent failure to provide adequate medical care does not constitute a medical wrong under Eighth Amendment), cert. denied, 450 U.S. 1041 (1980).

personnel, including the use of more force than is necessary to subdue a prisoner; 23/

. . . deliberate failure to protect against foreseeable assaults by fellow inmates, including confinement of inmates in locations where violence is commonplace; 24/

. . . specific instances of overcrowded conditions that shock the conscience; 25/

. . . denial or extreme limitation of opportunities for physical exercise; 26/

. . . diet which is nutritionally inadequate, as distinguished from merely monotonous; 27/

. . . infliction of corporal punishment; 28/

. . . unreasonably lengthy solitary confinement, such as 30 days or longer. 29/

Yet, the majority of the challenged conditions that have been examined by the courts continue to pass

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23/ George v. Evans, 633 F.2d 413, 416 (5th Cir. 1980).

24/ Gullatte v. Potts, 654 F.2d 1007, 1012-14 (5th Cir. 1981); Madyun v. Thompson, 657 F.2d 868, 875 (7th Cir. 1981).

25/ LaRean v. McDougall, 473 F.2d 974, 977-78 (2d Cir. 1972), cert. denied, 414 U.S. 878 (1973); Campbell v. Cauthron, 623 F.2d 503, 506 (8th Cir. 1980).

26/ Sweet v. South Carolina Dept. of Corrections, 529 F.2d 854, 865-66 (4th Cir. 1975).

27/ Hutto v. Finney, 437 U.S. 678, 683 (1978); Cunningham v. Jones, 567 F.2d 653 (6th Cir. 1977); Campbell v. Cauthron, 623 F.2d 503, 508 (8th Cir. 1980).

28/ Harris v. Chanclor, 537 F.2d 203, 206 (5th Cir. 1976).

29/ Hutto v. Finney, 437 U.S. 678 (1978).

constitutional muster. The courts repeatedly have made clear that the Constitution sets very minimal standards. Many conditions and practices that judges may find personally repugnant will not be found to violate the Constitution and will be permitted to continue, unless legislators and corrections departments themselves take steps to change them. "To the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society." 30/

The Fourteenth Amendment. A sentence to a penal institution obviously deprives an individual of personal liberty. 31/ The statutes and regulations of many states, however, provide inmates with certain protections regarding parole release, 32/ intra-prison transfers, 33/ transfers to administrative or disciplinary segregation, 34/ and

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30/ Rhodes v. Chapman, 452 U.S. 337, 347 (1981).

31/ Hewitt v. Helms, 103 S. Ct. 864, 869, 872 (1983), quoting Montanye v. Haymes, 427 U.S. 236, 242 (1976).

32/ Greenholtz v. Inmates of Nebraska Penal and Correctional Institution, 442 U.S. 1 (1979).

33/ Meachum v. Fano, 427 U.S. 215 (1976).

34/ Hewitt v. Helms, 103 S. Ct. 864 (1983).

disciplinary hearings. 35/ The courts have held that such statutes confer "liberty interests" on inmates that are independent of the liberty lost upon incarceration. Because inmates are expressly given these rights, they cannot be taken from them without following procedures that afford them due process of law. 36/ The requirements of due process in such cases may be minimal, however. For example, the Supreme Court has held that certain statutory provisions concerning administrative segregation created a "liberty interest," but that due process required only some notice of the reason for the transfer, an opportunity to present the inmate's views to the responsible official within a reasonable time, and "some sort of periodic review." 37/

The Fourteenth Amendment also prohibits states from denying inmates the equal protection of the laws. Thus, institutional conditions or practices that discriminate against

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35/ Finney v. Arkansas Board of Corrections, 505 F.2d 194, 208 (8th Cir. 1974) (officers may not sit in judgment on their own complaints in disciplinary proceedings); Wolff v. McDonnell, 418 U.S. 539 (1974) (hearing required prior to discipline for major misbehavior); Hurney v. Carver, 602 F.2d 993 (1st Cir. 1979) (dismissal of complaint where prisoner not permitted to call witnesses).

36/ Montanye v. Haymes, 427 U.S. 236 (1976); Mitchell v. Hicks, 614 F.2d 1016, 1019 (5th Cir. 1980); Bullard v. Wainwright, 614 F.2d 1020 (5th Cir. 1980).

37/ Hewitt v. Helms, 103 S. Ct. 864, 874 (1983).

inmates on impermissible bases such as race, religion, sex or age have been held unconstitutional. Since 1968, courts consistently have struck down policies of racial segregation in prisons, permitting temporary separation of the races only where violence is demonstrably imminent. 38/ Equal protection claims also have been combined successfully with other substantive constitutional claims, especially those relating to denial of religious freedoms to members of minority religions. 39/

The Supreme Court has ruled that inmates have a "meaningful right of access" to the courts guaranteed by the Constitution of the United States. Based on this right, courts have held that institutions:

> . . . may not tamper with inmate mail directed to the courts, even though under certain circumstances other kinds of mail may be inspected to prevent a potential breach of security; 40/
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> . . . may not interfere with the inmate's relationship with legal counsel, including

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38/ Lee v. Washington, 390 U.S. 333, 334 (1968); cf. Holt v. Hutto, 363 F. Supp. 194 (E.D. Ark. 1973), mod. sub nom. Finney v. Arkansas Bd. of Corrections, 505 F.2d 194 (8th Cir. 1974) (racial segregation impermissible if not undertaken for security purposes).

39/ Cruz v. Beto, 405 U.S. 319 (1972).

40/ Ex Parte Hull, 312 U.S. 546 (1941).

> "jailhouse lawyers" who are themselves prisoners; 41/
>
> . . . may not deny reasonable access by prisoners to decent legal libraries. 42/

The Supreme Court has not made clear, however, precisely where in the Constitution this right of access to the courts is found. Majority opinions have spoken of the right as "fundamental" but have not pointed to a particular article or amendment. The right may have Fourteenth Amendment underpinnings, but dissenting opinions have stressed the lack of language in that or any other constitutional provision that deals directly with the issue. 43/ Nevertheless, the right seems firmly established, and administrators should be aware that conditions or practices that have the effect of interfering with an inmate's access to the courts, lawyers, law books and materials necessary to the proper preparation of court papers are likely to be challenged.

41/ Johnson v. Avery, 393 U.S. 483 (1969).

42/ Bounds v. Smith, 430 U.S. 817 (1977).

43/ Bounds v. Smith, 430 U.S. 817, 835 (1977).

Appendix III

Comparison of Disposition Patterns Between
Four Selected U. S. District courts

Cases Closed Between July 1, 1979 and June 30, 1983

Stage of Final Disposition	Maryland				Virginia Western				Colorado				Wyoming			
	% 1983 Suits % of Cases	Median Days to Dispo.	Private Civil Litigation % of Cases	Median Days to Dispo.	% 1983 Suits % of Cases	Median Days to Dispo.	Private Civil Litigation % of Cases	Median Days to Dispo.	% 1983 Suits % of Cases	Median Days to Dispo.	Private Civil Litigation % of Cases	Median Days to Dispo.	% 1983 Suits % of Cases	Median Days to Dispo.	Private Civil Litigation % of Cases	Median Days to Dispo.
Before Issue Joined	4.1	85	20.0	113	4.5	16	18.2	137	13.2	31	13.7	70	18.4	27	14.3	100
After Motion Decided But Before Issue Joined	63.6	188	10.6	170	66.4	64	8.1	173	50.5	120	17.3	113	29.8	22	3.3	103
Issued Joined But No Other Court Action	.8	292	17.1	256	1.5	154	30.5	373	4.3	240	7.4	221	10.6	91	13.2	163
Issue Joined and After Judgment of Court on Motion	18.9	444	13.7	248	19.0	92	14.0	269	24.9	244	25.1	119	31.2	97	14.3	238
Issue Joined and After Pretrial Conference But Before Trial	2.4	861	23.3	431	1.7	300	13.3	530	5.3	678	27.6	131	1.4	25	35.1	338
During Court or Jury Trial	1.1	563	2.4	575	1.2	180	4.8	337	.2	672	1.4	585	0.0	0	4.4	387
After Court or Jury Trial	8.2	735	10.1	581	5.3	203	9.4	567	1.2	210	6.5	742	2.1	151	15.4	421
Other	.9	469	2.8	141	.4	21	1.7	163	3.4	230	1.0	240	6.5	111	0.0	0
	100% n = 1767		100% n = 614		100% n = 2125		100% n = 308		100% n = 507		100% n = 475		100% n = 141		100% n = 91	

APPENDIX IV

A List of Data Sources Used in the Regression Analysis of Section 1983 Suits

Five sources were relied on to gain information on the independent and dependent variables used in the statistical analysis of Section 1983 suits. They are:

(1) Bureau of Justice Statistics. Prisoners in State and Federal Institutions (U.S. Department of Justice: Washington, D.C.). This publication contains basic demographic information on prisoners in custody at the end of a given calendar year. Annual reports have been available since 1975. For 1973 and 1974, unpublished material made available by staff members at the Bureau of Justice Statistics was consulted. Finally, since 1981, this publication series has been superceded by a brief publication entitled Bulletin of the Bureau of Justice Statistics. These Bulletins appear monthly, including year-end compilations of state prisoner demographics.

(2) Bureau of Justice Statistics. Sourcebook of Criminal Justice Statistics (U.S. Department of Justice: Washington, D.C.). This publication is a secondary source compilation of data gathered in original research studies.

(3) Administrative Office of the U.S. Courts. Reports of the Proceedings of the Judicial Conference of the United States, Held in Washington, D.C.: Annual Report of the Director of the Administrative Office of the United States (U.S. Government Printing Office: Washington, D.C.). These annual reports present data on the civil and criminal caseload by the federal court system. They indicate cases filed and terminated during the year ending on June 30.

(4) U.S. Bureau of the Census. State Government Finances (U.S. Department of Commerce: Washington, D.C.). These annual reports on governmental expenditures were used to supplement data from the Sourcebook. Since 1981, State Government Finances is virtually the only source of corrections expenditure data. Fortunately, it is very comparable to previous data sources.

(5) The final source includes two different publications used as supplementary aids. They are the U.S. Law Enforcement Assistance Administration Census of Prisoners in State Correctional Facilities, 1973 (U.S. Department of Justice: Washington, D.C.) and a more recent annual publication called The Corrections Yearbook (Criminal Justice Institute: South Salem, NY).

The following list enumerates the data source (by title), gives a brief description of how the variable was operationalized, and indicates how the data were adjusted in this report to achieve greater precision and relevancy. Persons familiar with these data sources are aware of their limitations. Many of the variables are restricted to particular years and are based on the subjective judgments of experts rather than objective counting. The lack of continuity in systematic and comprehensive data collection activities requires a note of caution in interpreting the statistical results. To avoid similar problems from arising in the future, a review of data gathering policies by the National Institute of Justice and the Bureau of Justice Statistics seems in order. Corrections is an area where there are basic unfulfilled needs in the measurement of information relevant to management, planning, and research.

Variable	Data Source	Description and Adjustments
1. Number of State Prisoners	Prisoners in State and Federal Institutions, 1973-1981. For 1982 and 1983, see Bulletins of the Bureau of Justice Statistics.	This variable is measured by the number of prisoners under the jurisdiction of a given state at the end of a particular year. For example, those individuals counted on December 31, 1983 were considered to be the number for 1983. Because certain states (Alaska, Connecticut, Delaware, District of Columbia, Hawaii, Rhode Island, and Vermont) have "consolidated" state and local correctional systems, their state figures include many jail inmates. As a result, for these seven states, the number of prisoners sentenced for more than one year was taken as the state inmate population in order to achieve greater comparability with the other states. However, this adjustment was possible for data only since 1975 given the format used in the Prisoners in State and Local Institutions.
2. Number of Black Prisoners	Prisoners in State and Federal Institutions, 1978 to 1981. See also Bulletins for 1982 and 1983.	This variable is measured by the number of black prisoners under the jurisdiction of a given state at the end of a particular year. No adjustment could be made to take state and local consolidation of correctional facilities into account.
3. Number of Hispanic Prisoners	Prisoners in State and Federal Institutions, 1978 to 1981.	This variable is measured by the number of Hispanic origin under the jurisdiction of a given state at the end of a particular calendar year. No adjustment could be made to the factor of state and local consolidation into account.
4. Number of Female Prisoners	Prisoners in State and Federal Institutions, 1973 to 1981. See also Bulletins for 1982 and 1983.	This variable is measured by the number of female prisoners under the jurisdiction of a given state at the end of a particular calendar year. Figures from 1975 were adjusted to take state and local consolidation into account.
5. Total Incarceration Rate	Prisoners in State and Federal Institutions, 1977 to 1981.	This variable is measured by the total number of prisoners under the jurisdiction of a given state per 100,000 of the state's resident population.
6. Incarceration Rate of Black Prisoners	Prisoners in State and Federal Institutions, 1979 to 1981 and the Sourcebook of Criminal Justice Statistics, 1981. See Table 6.22 "Rate (per 100,000 civilian population) of sentenced prisoners in State and Federal institutions on Dec. 31, by region and jurisdiction, 1971-1979."	This variable is measured by the number of black prisoners under the jurisdiction of a given state per 100,000 of the state's resident population.

7. Incarceration Rate of Hispanic Prisoners	Prisoners in State and Federal Institutions, 1979 to 1981.	This variable is measured by the number of Hispanic prisoners under the jurisdiction of a given state per 100,000 of the resident Hispanic population.
8. Salary for Correctional Superintendents	Sourcebook of Criminal Justice Statistics, 1981. See Table 1.65 "Salary range for State correctional superintendents, by jurisdiction, as of Aug. 1, 1980."	This variable is measured by the minimum annual salary for each state's correctional superintendent.
9. Salary for Correctional Officers	The Corrections Yearbook, 1982 (p. 48) and 1983 (pp. 34-5). Sourcebook of Criminal Justice Statistics, 1981. See Table 1.63 "Salary for State Correctional Officers, by jurisdiction, as of Aug. 1, 1980."	This variable is measured by the minimum annual salary for each state's correctional officer.
10. Ratio of Inmates to Staff Members	The Corrections Yearbook, 1983 (pp. 46-47), 1982 (p. 34) and 1981 (p. 39). Sourcebook of Criminal Justice Statistics, 1981. See Table 1.67 "Full- and part-time staff and ratio of inmates to full-time staff in adult correctional facilities, by type of facility, region, and state, 1979." Sourcebook of Criminal Justice Statistics, 1978. See Table 1.100 "Number of correctional officers and inmates, and ratio of correctional officers to inmates, by state, 1977."	This variable is measured by the number of prisoners in adult correctional facilities to the full-time staff positions assigned to those facilities.
11. Number of Psychiatrists and Nurses	Sourcebook of Criminal Justice Statistics, 1982. See Table 1.80 "Mental Health staff and services in adult correctional facilities, by selected facility characteristics and jurisdiction, as of August 1980."	These variables are measured by the number of full-time psychiatrists and nurses assigned to adult correctional facilities in each state.
12. Racial Minorities Among Correctional Officers	Sourcebook of Criminal Justice Statistics 1977. See Table 1.22 "Characteristics of state correctional officers, by State, 1976."	This variable is measured by the percent of racial minorities among officers.
13. Total Death Rate	Sourcebook of Criminal Justice Statistics 1978, see Table 6.48 "Inmate Deaths in State and Federal correctional institutions, by jurisdiction, 1972-75." Prisoners in State and Federal Institutions, 1973 to 1982, was also used.	This variable is measured by the number of prisoners in a given state who died because of illness or natural causes, suicides, disturbances or riots, attacks by other inmates, or unknown causes. This figure was then divided by the total number of prisoners in that state for the same number of calendar year. Executions were excluded, however.

14. Net Death Rate	Sourcebook of Criminal Justice Statistics, 1978. See Table 6.49 "Inmate and Staff deaths in State and Federal correctional institutions, by jurisdiction, 1974 and 1975." Prisoners in State and Federal Institutions, 1978-1982.	This variable is measured by the number of prisoners in a given state who died because of suicide, riots or disturbances, or attacks by other inmates.
15. Adjusted Death Rate	Prisoners in State and Federal Institutions, 1978 to 1982.	This variable is measured by the number of prisoners in a given state who died because of suicide, riots or disturbances, attacks by other inmates, or unknown causes.
16. Direct Total Expenditures for State Corrections Per Prisoner	Sourcebook of Criminal Justice Statistics, 1982 was used for the years 1972 to 1979. For 1980, the Corrections Yearbook was used. In 1981, 1982 and 1983, State Government Finances was used.	Generally, this variable was measured by the total direct current expenditure for state corrections in a given fiscal year divided by the total number of prisoners at the end of an overlapping calendar year. For 1972 to 1980, expenditures for juvenile corrections for 11 states had to be subtracted from the total state figure.
17. Overcrowding	Sourcebook of Criminal Justice Statistics, 1982. See Table 1.78 "Confinement units and extent of overcrowding in adult correctional facilities, by type of facility, size of unit, region, and state, 1979."	This variable is measured by the percent of one-person correctional units (cells) that are overcrowded, i.e., provided less than 60 square feet of space per inmate.
18. Overcapacity	Sourcebook of Criminal Justice Statistics, 1978. See Table 6.36 "Rated Prison capacity and prison population, by region and jurisdiction, on June 30, 1977."	This variable is measured by the number of prisoners above or below state correctional administrators' views of what constitutes design capacity.
19. Court Orders and Decrees	Sourcebook of Criminal Justice Statistics, 1981. See Table 1.76 "Court Orders and Decrees concerning conditions in State and Federal adult correctional facilities, by issue, region, and jurisdiction, in effect on Mar. 31, 1978."	This variable is measured by the number of federal court orders and decrees in effect that concern conditions of confinement.
20. Violent Offenders	Census of Prisoners in State Correctional Facilities, 1973.	This variable is measured by the percent of all offenses sentenced for violent offenses, including murder and attempted murder, manslaughter, kidnapping, rape sexual assault, lewd act with a child, robbery, and assault.
21. Homicide Offenders	Census of Prisoners in State Correctional Facilities, 1973.	This variable is measured by the percent of all offenders sentenced for attempted murder or murder.

22. Correctional Payroll	Sourcebook of Criminal Justice Statistics, 1981. See Table 1.47 "Employment and Payroll for State and local correctional activities, by state and level of government, October 1971-79." State Government Finances was used for 1980-1983. See the tables, "Police protection and corrections employment and payrolls, by State and type of government for those years.	This variable is measured by the state government's expenditure for state correctional activities during October of a given year. Figures were in thousands of dollars.
23. Habeas Corpus Petitions	Annual Reports of the Administrative Office of the U.S. Courts, 1973-1984.	Habeas corpus petitions include only federal habeas corpus petitions filed by state prisoners.
24. Writs of Mandamus	Annual Reports of the Administrative Office of the U.S. Courts, 1973-1984.	Writs of mandamus are writs filed by by state prisoners only.
25. Civil Caseload	Annual Reports of the Administrative Office of the U.S. Courts, 1973-1984.	The civil caseload is all U.S. and private civil cases filed each year for each state.
26. Section 1983 Suits	Annual Reports of the Administrative Office of the U.S. Courts, 1973-1984. See Table C.3. "U.S. District Courts. Civil cases commenced during the fiscal year ending June 30, 19__."	This variable is measured by the number of 'civil rights' petitions filed by prisoners within the general category of private civil suits.

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