

Chapter One: Introduction

A. WHAT IS THIS HANDBOOK?

This Handbook explains how a person in a state prison can start a lawsuit in the federal court, to fight against mistreatment and bad conditions. The Handbook does not assume that a lawsuit is the only way to challenge poor treatment or that it is always the best way. It only assumes that a lawsuit can sometimes be one useful weapon in the ongoing struggle to change prisons and the society that makes prisons the way they are.

The Handbook discusses only one kind of legal problem which prisoners face – **the problem of conditions inside prison and the way you are treated by prison staff.** The Handbook does not go into how you got to prison or how you can get out of prison. It does not explain how to conduct a legal defense against criminal charges or disciplinary measures for something you supposedly did in prison.

The Importance of “Section 1983”

A prisoner can take several different kinds of legal action about conditions and treatment in prison. This Handbook is about only one of those kinds of legal action – a lawsuit in federal court based on a federal law known as “Section 1983” (Section 1983 of Title 42 of the United States Code). The U.S. Congress passed Section 1983 to allow people to sue in federal court when a state or local official violates their federal rights. If you are in state prison, you can bring a Section 1983 suit to challenge certain types of poor treatment. Chapter Two of this Handbook explains in detail which kinds of problems fit under Section 1983.

B. HOW TO USE THIS HANDBOOK

The Handbook is organized into six chapters, plus several appendices.

- ❑ This is **Chapter One**, which gives you an introduction to the Handbook. Sections C through E of this chapter indicate the limits of this Handbook and explain how to try to get a lawyer. Sections F and G give a short history of section 1983 and discuss its use and limits in political struggles in and outside prison
- ❑ **Chapter Two** explains who can use Section 1983, what you can sue about, whom you can sue and what the court can do if it decides in your favor. It also summarizes many of your rights in prison.

FIRST STEPS:

1. **Know Your Rights!** Ask yourself: have my *federal* rights been violated? If you have experienced one of the following, the answer may be yes:

- ❑ Guard or prisoner brutality or harassment
- ❑ Unsafe cell or prison conditions
- ❑ Censorship, or extremely limited mail, phone, or visit privileges
- ❑ Inadequate medical care
- ❑ Interference with practicing your religion
- ❑ Inadequate food
- ❑ Racial, sexual or ethnic discrimination
- ❑ Placement in the hole without a hearing

2. **Exhaust the Prison Grievance System!** Use the prison complaint or grievance system and write up your concerns in detail. Appeal it all the way and save your paperwork. It is very important you do this before filing a suit.

3. **Try to Get Help!** Consider trying to hire a lawyer or talking to a jailhouse lawyer, and be sure to request a pro se section 1983 packet from your prison law library or the district court.

- ❑ **Chapter Three** gives the basic procedures for starting a Section 1983 suit and getting immediate help from the court – what legal papers to file, when, where and how.
- ❑ **Chapter Four** discusses the first things that happen after you start your suit. It helps you respond to a “motion to dismiss” your suit or a “motion for summary judgment” against you. It also tells you what to do if prison officials win these motions. It explains how to use “pre-trial discovery” to get information and materials from prison officials. Chapter Four does not go into the later stages of a Section 1983 suit. If you get to this point, you will need other books and – if possible – help from a lawyer or law student.
- ❑ **Chapter Five** provides some legal ammunition for your fight against harassment. Prison officials frequently try to make it hard for a prisoner to bring a lawsuit, especially when the suit is against those officials. Chapter Five summarizes recent decisions in which the U.S. Supreme Court and other courts have ruled that a prisoner has the legal right to prepare and file lawsuits on his or her own behalf; to get help with those suits from other

prisoners; and to have access to an adequate law library.

- **Chapter Six** gives some basic information about the U.S. legal system. It also explains how to find laws and court decisions in a law library and how to refer to them in legal papers. The strange way in which law books are organized and court decisions are written seems designed to make it very hard for a non-lawyer to deal with the law. But if you read Chapter Six carefully and follow it as you work, you will be able to cut through the maze and understand what is really happening.

IMPORTANT!

Chapters Five and Six are not specifically about Section 1983. They give general information which you may find useful when you prepare your suit. **It is a good idea to read Chapters Five and Six BEFORE you try to use Chapters Two through Four.**

Appendices

The “Appendices” are additional parts of the Handbook that provide extra information. The appendices to the Handbook provide materials for you to use when you prepare your suit and after you file it. **Appendix A** contains a glossary of legal terms. **Appendix B** contains forms for basic legal papers. You will also find helpful forms and sample papers within Chapters Three and Four. **Appendix C** gives the text of important constitutional provisions. **Appendix D** lists possible sources of support and publicity – legal groups, political and civic groups that help prisoners,

progressive magazines and newspapers that cover prison issues, and other outlets you can write too. **Appendix E** lists other legal materials you can read to keep up to date and learn details which are not included in this manual. **Appendix F** provides special information for non-citizens, and **Appendix G** provides information about the rights of prisoners under International Law. **Appendix H** includes a list of District Courts for your reference.

C. WHO CAN USE THIS HANDBOOK:

This Handbook is meant to be used by state prisoners, but others may find it helpful too.

1. Prisoners in City or County Jail can use this Handbook.

If you are in a city or county jail, this Handbook may still be helpful to you. People serving sentences in jail have the same rights under Section 1983 and the U.S. Constitution as people in prison. People in jail waiting for trial, who are called “pretrial detainees,” sometimes have even more protections under the Constitution. Chapter Two, Section C, Part 10 lists some federal court decisions on the constitutional rights of pretrial detainees.

2. Prisoners in Federal Prison can use this Handbook.

If you are in federal prison, this Handbook will also be somewhat helpful. You cannot use Section 1983 to sue about bad conditions and mistreatment in federal prison but you don’t need it there. In a very important case called *Bivens v. Six Named Agents of Federal Bureau*

Private Prisons

As you know, most prisons are run by the state or the federal government, which means that the guards who work there are state or federal employees. A **private prison**, on the other hand, is operated by a for-profit corporation, which employs private individuals as guards.

Prompted by the huge increase in the prison population and the public concern for rising costs, private prisons have increased from just four in 1988, to 162 in 2000 and now house 6% of the total prison population. That is over 90,000 prisoners. Those in favor of private prisons argue that private companies can manage prisons more effectively than the government and for less money. Those against private prisons have argued that incarceration is the responsibility of the government and should not be controlled by private parties that are only interested in making a profit. Some of those against private prisons also ask whether large corporations are exploiting prisoners for cheap labor.

Studies have shown that the assumption that private prisons cost less money may be a mistake. These prisons may pay their staff lower salaries, but make up for this with higher administrative costs. One study found that factors like the age of the prison and the level of security (minimum, medium or maximum) determine costs no matter who runs the prison. On the other hand, the assumption that private prisons will be less protective of prisoners' rights may also be mistaken. Studies of the number of escapes, riots, assaults (both by inmates and by guards), and suicides all found little or no difference between public and private prisons.

of *Narcotics*, 403 U.S. 388 (1971), the Supreme Court said that you can sue in federal court whenever a federal official violates your rights under the U.S. Constitution. This is called a “*Bivens* action.” Federal prisoners have basically the same federal rights as state prisoners so almost all of this Handbook applies to you too.

3. Prisoners in Private Prisons can use this Handbook.

If you are one of the hundreds of thousands of prisoners currently incarcerated in a private prison, most of the information in this Handbook also applies to you. The ability of state prisoners in private prisons to sue under Section 1983 is discussed in Chapter Two, Section B. In some cases it is actually easier to sue private prison guards, because they cannot claim “qualified immunity.” You will learn about “immunity” later in the Handbook.

Federal prisoners serving sentences in private prisons can use the *Bivens* action described above in Section 2, with some limitations. In a case called *Correctional Services Corporation v. Malesko*, 534 U.S. 61 (2001), the Supreme Court held that a federal prisoner who suffered a heart attack after a private guard made him climb up five flights of stairs could not sue the private half-way house using the *Bivens* doctrine. However, someone in this situation may be able to sue the private prison employees themselves. Another choice for a prisoner in this situation is to file a claim in state court. These types of actions are described in Section G of this chapter.

4. Prisoners in Every State Can Use This Handbook.

Section 1983 lawsuits provide a way for you to assert your rights under the United States Constitution. Every prisoner in the country, no matter what state he or she is in, has those same rights. However, different courts interpret these rights differently. For example, a federal court in New York may come to one conclusion about an issue, but another federal court in Tennessee may reach a totally different conclusion about the same issue.

States also have their own laws, and their own constitutions. State courts, rather than federal courts, have the last word on what the state constitution means. This means that in some cases, you might have more success in state court, than in federal court. You can read more about this possibility in the box at the end of this chapter.

How do I use this Handbook?

This is the **Jailhouse Lawyers Handbook**. Sometimes it will be referred to as the “**JLH**” or the “**Handbook**.” It is divided into six **Chapters**, which are also divided into different **Sections**. Each **Section** has a letter, like “**A**” or “**B**.” Some **Sections** are divided into **Parts**, which each have a number, like “**1**” or “**2**.”

Sometimes we will tell you to look at a **Chapter** and a **Section** to find more information. This might sound confusing at first but when you are looking for specific things, it will make using this Handbook much easier.

We have tried to make this Handbook as easy to read as possible. But there may be words that you find confusing. At the end of the Handbook, in Appendix A, we have listed many of these words and their meanings in the **Glossary**. If you are having trouble understanding any parts of it, you may want to seek out the **Jailhouse Lawyers** in your prison. Jailhouse Lawyers are prisoners who have educated themselves on the legal system, and one of them may be able to help you with your suit.

In many places in this Handbook, we refer to a past legal suit to prove a specific point. It will appear in italics, and with numbers after it, like this:

Smith v. City of New York, 311 U.S. 288 (1994)

This is called a “citation.” It means that a court decided the case of *Smith v. City of New York* in a way that is helpful or relevant to a point we are trying to make. Look at the places where we use citations as examples to help with your own legal research and writing.

There is more information on understanding and writing using cases in Chapter Six.

Unfortunately, we don’t have the time or the space to tell you about the differences in the law from state to state. So while using this Handbook, you should also try to check state law using the resources listed in Appendix E. You can also check the books available in your prison and contact the nearest office of the National Lawyers Guild or any other lawyers, law students or political groups you know of that support prisoners’ struggles.

Anyone who wishes can contact us about revising this Handbook for free distribution in their state. Also, the Center for Constitutional Rights and the National Lawyers Guild are working to produce state manuals in coming years.

5. Keeping Up to Date and Learning More Details

This Handbook was completely revised and updated in 2003. However, one of the exciting but frustrating things about the law is that it is constantly changing. We have left out many details, and new decisions and laws will change the legal landscape significantly in the future.

So be very careful to **check for changes in the law when you use this printing of the Handbook.**

Checking to make sure a case is still “good law,” known as “Shepardizing,” is very important, and is explained in Chapter Six. You can also write to prisoners’ rights and legal organizations listed in Appendix D for help. Groups which can’t represent you may still be able to help with some research or advice.

D. WHY TO TRY AND GET A LAWYER

In a Section 1983 suit you have a right to sue without a lawyer. This is called suing “*pro se*,” which means “for himself or herself.” Filing a law suit *pro se* is very difficult. Thousands of Section 1983 suits are filed by prisoners every year, and *most* of these suits are lost before they even go to trial. This is not said to discourage you from turning to the courts. Rather, it is to encourage you to do everything you can to try to get a lawyer to help you, before deciding to file *pro se*.

A lawyer is also very helpful after your suit has been filed. He or she can interview witnesses and discuss the case with the judge in court, while you are confined in prison. A lawyer also has access to a better library and more familiarity with legal forms and procedures. And despite all the legal research and time you spend on your case, many judges are more likely to take a lawyer seriously than someone filing *pro se*.

If you feel, after reading Chapter Two, that you have a basis for a Section 1983 lawsuit, try to find

Why so much Latin?

"Pro Se" is one of several Latin phrases you will see in this manual. The use of Latin in the law is unfortunate, because it makes it hard for people who aren't trained as lawyers to understand a lot of important legal procedure. We have avoided Latin phrases whenever possible. When we have included them, it is because you will see these phrases in the papers filed by lawyers for the other side, and you may want to use them yourself. Also, all Latin phrases are highlighted in italics, *like this*. Check the glossary at Appendix A for any words, Latin or otherwise, that you don't understand.

a good lawyer to represent you. You can look in the phone book to find a lawyer, or to get the address for the “bar association” in your state. A bar association is a group that many lawyers belong to. You can ask the bar association to give you the names of some lawyers who take prison cases.

You can also request a **Referral Directory**, which lists lawyers in various states, from the National Lawyers Guild. Their address is in Appendix D.

You probably will not be able to pay the several thousand dollars or more which you would need to hire a lawyer. But there are other ways you might be able to get a lawyer to take your case.

- ❑ If you have a good chance of winning a substantial amount of money (explained in Chapter Two, Section E), a lawyer might take your case on a “contingency fee” basis. This means you agree to pay the lawyer a part of the money if you win (usually one-third), but the lawyer gets nothing if you lose. This kind of arrangement is used in many suits involving car accidents and other personal injury cases outside of prison. In prison, it may be appropriate if you have been severely injured by guard brutality or an unsafe prison condition.
- ❑ If you don’t expect to win money from your suit, a lawyer who represents you can get paid by the government if you win your case. These fees are authorized by the United States Code, title 42, section 1988. However, the recent Prison Litigation Reform Act of 1996 (called the “PLRA” and discussed in Section F of this chapter) added new rules that restrict the court’s ability to award fees to your lawyer. These new provisions may make it harder to find a lawyer who is willing to represent you.
- ❑ If you can’t find a lawyer to represent you from the start, you can file the suit yourself and ask the court to “appoint” or get a lawyer for you. Unlike in a criminal case, you have no “right to counsel.” This means that a judge is not required by law to appoint counsel for you in a Section 1983 case, but he or she can appoint counsel if he or she chooses. You will learn how to ask the judge to get you a lawyer in Chapter Three, Section C, Part 3 of this Handbook.
- ❑ The judge can appoint a lawyer as soon as you file your suit. But it is much more likely that he or she will only appoint a lawyer for you if you successfully get your case moving forward, and

convince the judge that you have a chance of winning. This means that the judge may wait until after he or she rules on the prison officials' motions to dismiss your complaint or motion for summary judgment. This Handbook will help you prepare your basic legal papers (see Chapters Two and Three) and respond to the *motion to dismiss* and the *motion for summary judgment* (see Chapter Four).

E. MONITORING YOUR LAWYER AND CASE

Even if you have a lawyer from the start, you may still want to use this Handbook to understand what he or she is doing. Be sure the lawyer explains the choices you have at each stage of the case. **Remember that he or she is working for you.** This means that he or she should answer your letters and return your phone calls within a reasonable amount of time. Don't be afraid to ask your lawyer anything. If you don't understand what is happening in your case, **ask your lawyer to explain it to you.** Don't ever let your lawyer force decisions on you or do things you don't want.

F. A SHORT HISTORY OF SECTION 1983 AND THE STRUGGLE FOR PRISONERS' RIGHTS

As you read in Section A, this Handbook is all about a federal law known as "section 1983." Section 1983 is a way for any individual (not just a prisoner) to challenge something done by a state employee. The part of the section you need to understand reads as follows:

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

Chapter Two will explain what this means in detail, but we will give you some background information here. Section 1983 is a law that was passed by the U.S. Congress over 100 years ago, but it had very little effect until the 1960s. Section 1983 was originally known as Section 1 of the Ku Klux Klan Act of 1871. Section 1983 does not mention race, and it is available for use by people of any color, but it was originally passed specifically to help African-Americans enforce the new constitutional rights they won after the Civil

War -- specifically, the 13th, 14th and 15th Amendments to the U.S. Constitution. Those amendments prohibited slavery, established the right to due process of law and equal protection of the laws, and guaranteed every male citizen the right to vote. Although these Amendments became law, white racist judges in the state courts refused to enforce these rights, especially when the rights were violated by other state or local government officials. The U.S. Congress passed Section 1983 to allow people to sue in federal court when a state or local official violates their federal rights.

Soon after section 1983 became law, however, Northern big businessmen joined forces with Southern plantation owners to take back the limited freedom that African-Americans had won. Federal judges found excuses to undermine Section 1983 along with most of the other civil rights bills passed by the liberal Congress. Although the purpose of Section 1983 was to bypass the racist state courts, federal judges ruled that most lawsuits had to go back to those same state courts. Their rulings remained law until African-Americans began to regain their political strength through the civil rights movement of the 1960s.

In the 1960s, two very good Supreme Court cases named *Monroe v. Pape*, 365 U.S. 167 (1961) and *Cooper v. Pate*, 378 U.S. 546 (1964) reversed this trend and transformed section 1983 into an extremely valuable tool for state prisoners. You will learn more about these cases in Section B of Chapter Two. Prisoners soon began to file more and more federal suits challenging prison abuses. A few favorable decisions were won, dealing mainly with freedom of religion, guard brutality, and a prisoner's right to take legal action without interference from prison staff. But, many judges still continued to believe that the courts should leave prison officials in charge -- no matter what those officials did. This way of thinking is called the "hands-off doctrine" because Judges keep their "hands off" prison administration.

The next big breakthrough for prisoners did not come until the early 1970s. African-Americans only began to win legal rights when they organized together politically, and labor unions only achieved legal recognition after they won important strikes. So too, prisoners did not begin to win many important court decisions until the prison movement grew strong.

Powerful, racially united strikes and rebellions shook Folsom Prison, San Quentin, Attica and other prisons throughout the country during the early 1970s. These rebellions brought the terrible conditions of prisons into

the public eye and had some positive effects on the way federal courts dealt with prisoners. Prisoners won important federal court rulings on living conditions, access to the media, and procedures and methods of discipline.

Unfortunately, the federal courts did not stay receptive to prisoners' struggles for long. In 1996, Congress passed and President Clinton signed into law the Prison Litigation Reform Act (PLRA). The PLRA is extremely anti-prisoner, and designed to limit prisoners' access to the federal courts. Why would Congress pass such a repressive piece of legislation? Many people say Congress believed a story that was told to them by states tired of spending money to defend themselves against prisoner lawsuits. In this story, prisoners file mountains of unimportant lawsuits because they have time on their hands, and enjoy harassing the administration. The obvious truth - **that prisoners file a lot of lawsuits because they are subjected to a lot of unjust treatment** - was ignored.

The PLRA makes filing a complaint much more costly, time-consuming, and risky to the prisoner. Many prisoners' rights organizations have tried to get parts of the PLRA struck down as unconstitutional, but so far this effort has been unsuccessful. You will find specific information about the individual parts of the PLRA in later chapters of this Handbook.

History has taught us that convincing the courts to issue new rulings to improve day-to-day life in prisons, and changing oppressive laws like the PLRA, requires not only litigation, but also the creation and maintenance of a prisoners' rights movement both inside and outside of the prison walls.

G. THE USES AND LIMITS OF LEGAL ACTION

Only a strong prison movement can win and enforce significant legal victories. But the prison movement can also use court action to help build its political strength. A well-publicized lawsuit can educate people outside about the conditions in prison. The struggle to enforce a court order can play an important part in political organizing inside and outside prison. Favorable court rulings backed up by a strong movement can convince prison staff to hold back, so that conditions inside are a little less brutal and prisoners have a little more freedom to read, write, and talk.

Still, the value of a Section 1983 lawsuit is limited. It may take several years from starting the suit to win a final decision that you can enforce. There may be complex trial procedures, appeals, and delays in

OTHER LEGAL OPTIONS TO CHALLENGE PRISON CONDITIONS

Claims under Section 1983 are federal claims that can be brought in federal court. You may want to consider suing in state court instead.

There are pros and cons to bringing a case in state court. In state court, you may be able to enforce rights that you don't have in federal court. For example, a state "tort" claim is an entirely different way to address poor prison conditions. A "tort" means an injury or wrong of some sort. The advantage of suing in state court is that lots of conduct by prison guards can be considered a "tort" but may not be so bad as to be a federal violation.

For example, you will learn in Chapter Two that the Eighth Amendment prohibits "cruel and unusual punishment" and protects prisoners from guard brutality. However, this type of constitutional claim requires that you prove that you were injured and that the guard acted maliciously. On the other hand, you can sue a guard for the tort of "battery" on much less serious facts. A "battery" is any intentional unwanted physical touch. If a guard spits on you or shoves you, that is a battery.

Another type of state claim is a claim based on your state's constitution. Some state constitutions provide more rights than the federal constitution.

Sometimes a prisoner's suit handled by a lawyer will include claims based on state law as well as federal law. You can do this in a Section 1983 suit if the action you are suing about violates both state and federal law. **You can't use Section 1983 to sue about an action that only violates state law.** But it is tricky to try this without an experienced lawyer, and usually it won't make a very big difference.

Historically, federal judges were more sympathetic to prisoners than state judges. However, the PLRA has made federal court a much less friendly place for prisoners. Sadly, that does not mean that you will necessarily get fair treatment in state court. Many state court judges are elected, rather than appointed, so they may avoid ruling for prisoners because it might hurt their chances of getting re-elected.

Unfortunately, as we said before, we don't have room in this manual to describe the law of all the states. However, look for new CCR & NLG state manuals available in 2005. In the mean time, Appendix E lists some organizations that may have information about your state.

complying with a court order. Prison officials may be allowed to follow only the technical words of a court decision, while continuing their illegal behavior another way. Judges may ignore law which obviously is in your favor, because they are afraid of appearing “soft on criminals” or because they think prisoners threaten their own position in society. Even the most liberal, well-meaning judges will only try to change the way prison officials exercise their power. No judge will seriously address the staff’s basic control over your life.

To make fundamental change in prison, you can’t rely on lawsuits alone. It is important to connect your suit to the larger struggle. Write press releases that explain your suit and what it shows about prison and about the reality of America. Send the releases to newspapers, radio and TV stations, and legislators. Keep in touch throughout the suit with outside groups that support prisoners’ struggles. Look at Appendix D for media and groups that may be able to help you. We have also provided some pointers on writing to these groups. Discuss your suit with other prisoners and involve them in it even if they can’t participate officially. Remember that a lawsuit is most valuable as one weapon in the ongoing struggle to change prisons and the society which makes prisons the way they are.

Of course, all this is easy for us to say, because we are not inside. All too often jailhouse lawyers and activists face retaliation from guards due to their organizing and litigation. Section B of Chapter Five explains some legal options if you face retaliation. However, while the law may be able to stop abuse from happening in the future, and it can compensate you for your injuries, the law cannot guarantee that you will not be harmed. Only you know the risks that you are willing to take. Finally, you should know that those of us who fight this struggle from the outside are filled with awe and respect at the courage of those of you who fight it, in so many different ways, on the inside.