

# CASELOAD HIGHLIGHTS

Volume 4 • Number 2

EXAMINING THE WORK OF STATE COURTS

## Prisoner Litigation in Relation to Prisoner Population

The overwhelming majority of individuals accused of serious crimes (e.g., homicide, armed robbery, rape, assault, and burglary) have their cases heard in state courts. If convicted, offenders are sentenced and, in many instances, given terms of imprisonment. Yet, the work of the state courts does not end with the imposition of sanctions.

Inmates of state prisons and jails have the opportunity to litigate issues that have a direct bearing on state courts. Simply stated, pris-

oners can affect the state courts through the filing of habeas corpus petitions and Section 1983 lawsuits in federal court. In a habeas corpus petition, a prisoner challenges the validity of his or her conviction, and sometimes the sentence. After reviewing a petition, a federal court might order the state court to retry or resentence the previously convicted individual, or even order the individual to be immediately released from custody.

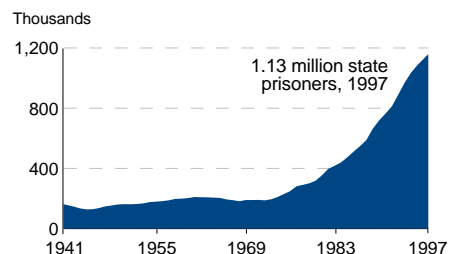
In Section 1983 lawsuits, inmates challenge the condi-

tions of their confinement (e.g., inadequate space, food, and medical care). Successful lawsuits have been the basis for federal court orders limiting the number of prisoners that can be incarcerated in prison or jail.

These restrictions on jail and prison capacity may influence state judges' pre-trial detainment and sentencing decisions. Hence, state prison and jail inmates have the legal tools to affect the very institution that placed them in custody. Yet, despite the reciprocal effect that prison populations can have on state courts, very little is known about how prison population relates to the volume of prisoner litigation.

What is the relationship between the number of petitions and lawsuits filed each year and the number of prisoners incarcerated in our nation's state prisons? Examining this question is the central focus of this issue of *Caseload Highlights*. First to be considered is the trend in the nation's prison population in

Total State Prisoner Populations, 1941-1997



Source: Historical Statistics on Prisoners in State and Federal Institutions, Year End 1925-1986: United States (ICPSR) and Corrections Populations in the United States, 1987-1996, Bureau of Justice Statistics.

recent years. Second, the legal developments permitting prisoners to challenge their convictions and conditions of confinement will be reviewed. The final step is to clarify the interrelationship between state prison population, legal developments, and federal court litigation.

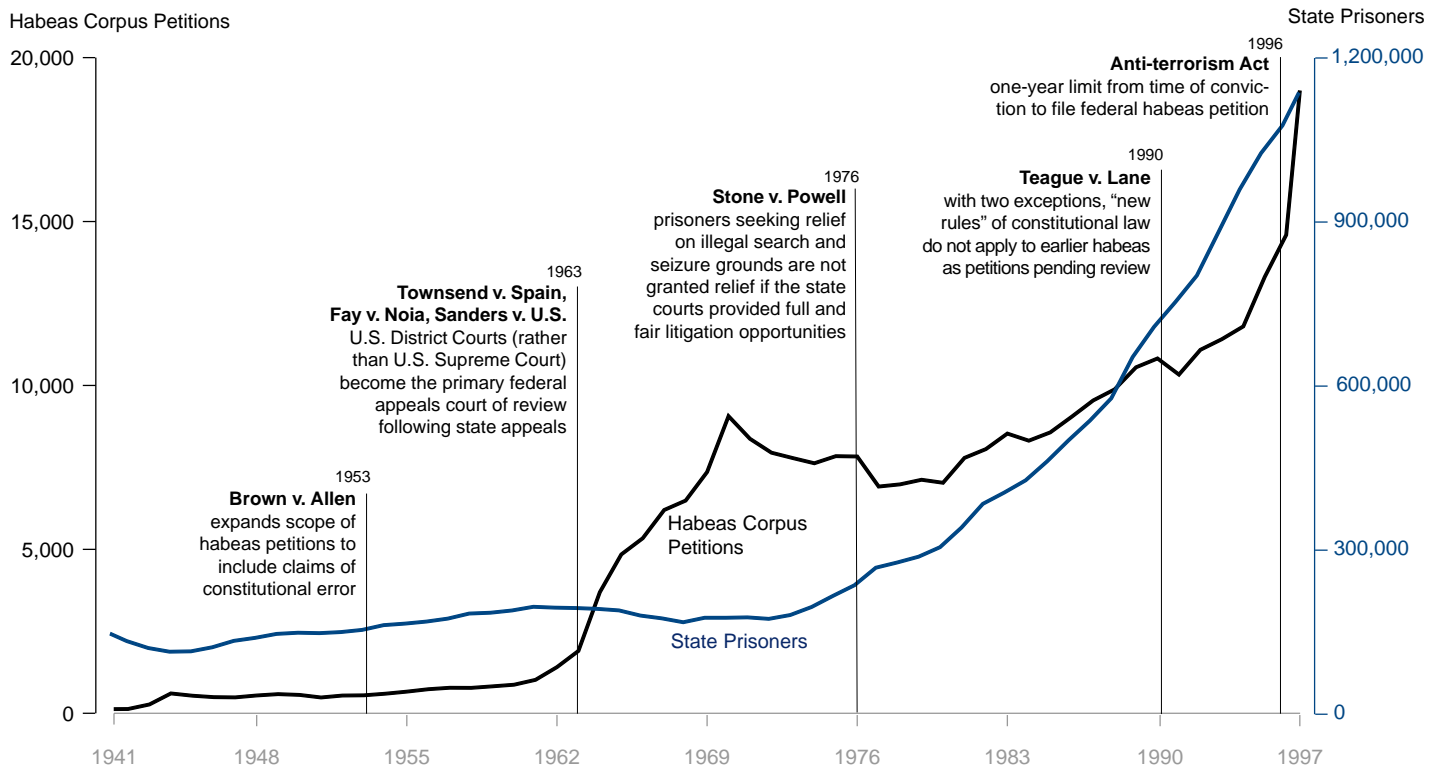
Currently, there are well over a million persons confined in our state prisons. Following years of little change, the number of state prison inmates began to increase rapidly in the 1970s. This ongoing trend led to a doubling of the nation's state prison population over the last decade. Concurrent with the growth in prison population have been changes in the law concerning the rights of prisoners to file petitions and lawsuits in federal court.

*Habeas corpus petitions* allege that the police, prosecutor, defense counsel, or trial court deprived the prisoners of their federal constitutional rights, such as the right to effective assistance of counsel. Because these petitions must have been presented to the state courts for review, the prisoners are relitigating previously resolved issues. Nevertheless, if these petitions are successful in federal courts, federal judges can issue writs of habeas corpus ordering the prisoners to be released from custody, their sentences reduced, or their cases remanded for retrial or resentencing.

*Section 1983 lawsuits* are filed under Section 1983 of Title 42 of the U.S. Code in federal court. These lawsuits claim state officials deprived the prisoners of their constitutional rights, such as adequate medical treatment, protection against excessive force by correctional officers or violence by other inmates, due process in disciplinary hearings, and access to law libraries. If the prisoners win their lawsuits, they may be awarded monetary damages or other relief.

# Habeas Corpus Petitions

## Habeas Corpus Petitions and State Prisoner Populations, 1941-1997



Data Source: Administrative Office of the United States Courts.

The modern American history of habeas corpus begins with the U.S. Supreme Court decision in *Brown v. Allen*, 344 U.S. 443 (1953), expanding the scope of the writ from a narrow focus on jurisdictional error to claims of constitutional error brought by prisoners in state custody. That decision empowered U.S. District Courts to redetermine issues concerning state criminal prosecutions even if the state possessed, and properly used, its own "corrective procedures" during the appeal process.

The contemporary conflict over habeas corpus petitions arose in 1963, when three U.S. Supreme Court cases changed the criteria for federal review of state criminal cases.<sup>1</sup> After these cases, U.S. District Courts, rather than the U.S. Supreme Court, became "the principal means through which the federal judiciary exercised authority over the state criminal process."<sup>2</sup> Much of the criticism of federal review of state court convictions came from state judges objecting to having a single U.S. District Court judge set aside a conviction

considered proper by each level of the state courts (trial, intermediate appellate, and supreme).

Following these important U.S. Supreme Court decisions, the volume of habeas corpus petitions increased substantially. The number of habeas corpus petitions filed in all U.S. District Courts increased from 127 cases in 1941 to 14,591 cases in 1996, almost twice the rate at which total state prison population grew during the same time period. A closer look shows habeas corpus peti-

tions growing slowly from 1941 until 1962, similar to state prisoner population. Habeas corpus petitions then rose sharply (in response to the U.S. Supreme Court decisions broadening the authority of federal courts to review state court convictions) until 1970. During the 1970s, habeas petitions declined as the state courts focused on improving their capacity to apply appropriate constitutional standards to criminal cases.<sup>3</sup>

After 1981, habeas corpus petitions began increasing

once again, despite efforts of the U.S. Supreme Court to impose restrictive conditions on their filing.<sup>4</sup> One response to changing legal rules is clearly shown by the 30 percent jump in habeas corpus petitions between 1996 and 1997 following the passage of the Anti-terrorism Act. However, while various federal court decisions and legislative actions are associated with either a rise or fall in the number of habeas corpus petitions, the effects tend to be relatively short-lived. It appears that the fundamental engine driving the long-term trend in habeas corpus

petitions is prison population. More prisoners appear to translate into more litigation, swamping the effects of most changes to the legal framework.

The visible correspondence between the number of state prisoners and the number of habeas petitions is confirmed through statistical analysis. Specifically, increases in prisoner population are almost always associated with proportionate increases in habeas corpus petitions. This is a useful finding for policy purposes since yearly increases in the number of state prisoners can be used

to help plan for changes in habeas corpus caseloads.

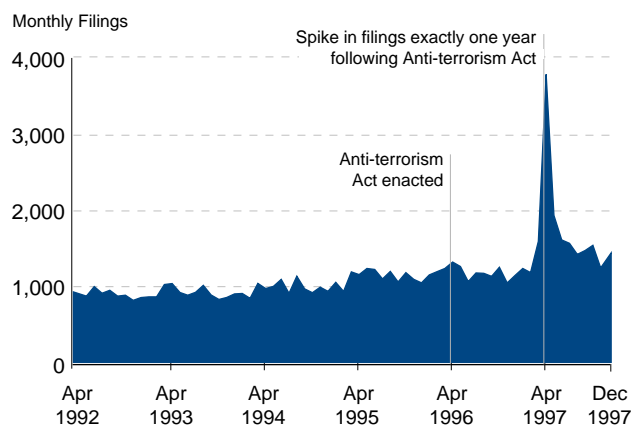
Additional analysis shows that another strong predictor of growth in the number of habeas corpus petitions is the number of habeas corpus petitions filed the previous year. Between 1941 and 1997, an increase of 100 in the number of habeas corpus petitions filed during a given year was associated with an increase of about 94 habeas corpus petitions filed one year later.<sup>5</sup> This may indicate that the issues raised by prisoners in their petitions do not vary radically from one year to the

next. Without denigrating prisoners, is it possible that there is a “stock in trade” of litigation issues at their disposal? Are prisoners encouraged to raise issues (e.g., ineffective counsel) because of their perception that some issues have a greater opportunity of being heard or even ruled favorably, based on the litigation experience of their fellow prisoners? While this interpretation is speculative, we do know that some issues (e.g., ineffective counsel and trial court errors) are raised much more frequently than others (e.g., prosecutorial misconduct, Fourth Amendment violations).<sup>6</sup>

## The Recent Trend in Habeas Corpus Petitions

The very sharp increase in the number of habeas corpus petitions that occurred between 1996 and 1997 appears to be an unintended consequence of the (April, 1996) enactment of the Antiterrorism and Effective Death Penalty Act (referred to hereafter as the Antiterrorism Act). Monthly data supplied by the U.S. Administrative Office of the Courts on the number of habeas corpus petitions show that a “spike” in the number of habeas corpus petitions occurred in April, 1997, one year after the enactment of the Antiterrorism Act. The Antiterrorism Act seems to have produced a one-time “rush-to-file” by state prisoners who were apparently uncertain about the one-year post-conviction time limit on filing stated in this legislation. This procedural requirement specifies that both federal and state inmates have one year from the time their convictions become final to file a habeas petition in federal court. Other procedural requirements such as limits on the number of successive petitions also have not resulted in a decline in habeas corpus petitions.

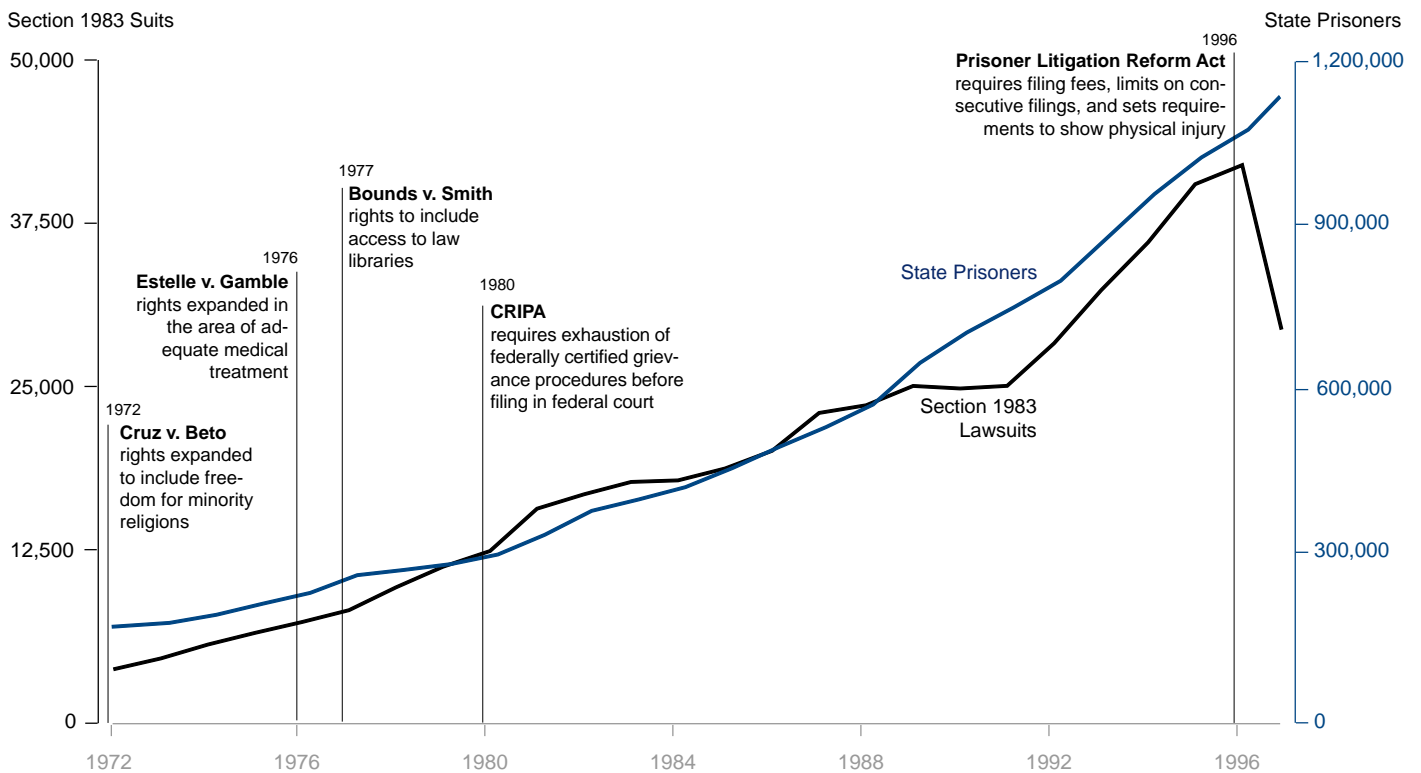
Monthly Habeas Corpus Petitions, 1992-1997



Data Source: Administrative Office of the United States Courts.

# Section 1983 Lawsuits

## Section 1983 Lawsuits and State Prisoner Populations, 1972-1997



Data Source: Administrative Office of the United States Courts.

In the 1960s, when the U.S. Supreme Court first established that prisoners had constitutional rights, there were few Section 1983 lawsuits filed in the U.S. District Courts.<sup>7</sup> The Administrative Office of the U.S. Courts reported only 218 cases nationally in 1966, the first year Section 1983 suits were recorded as a specific category of litigation. Beginning in the 1970s, federal court decisions expanded the scope of prisoner claims in several new areas including religious freedom to members

of minority religions, adequate medical treatment, and access to law libraries.<sup>8</sup> The number of cases began to rise steadily and soon became linked closely to the number of prisoners. As seen in the above graph, the number of Section 1983 lawsuits nationwide increased twelvefold from 1972 to 1996 (from 3,448 to 41,952 cases), while state prison population increased six times over the same time period (from 174,379 to 1,076,625). Efforts during the 1980s to limit the number of Section 1983

lawsuits by legislative and judicial policy (e.g., CRIPA) met with little success prior to 1996.<sup>9</sup>

As is the case with habeas corpus filings, the close correspondence between the number of state prisoners and the number of Section 1983 lawsuits is borne out by statistical analysis. While the data suggest that habeas corpus petitions were typically filed about six years after incarceration, the size of state prison populations was shown to have a more immediate impact on

Section 1983 cases. The lack of a lag relationship between state prisoner population and the number of Section 1983 lawsuits suggests that many lawsuits are filed relatively soon after state prisoners are incarcerated, which is possible because there is no exhaustion requirement as in the case of habeas corpus petitions. Additional analysis indicates that between 1972 and 1997, every increase of 10,000 in the state prison population is associated with an increase of about 363 lawsuits filed.<sup>10</sup> Given that the

## Section 1983 Lawsuits continued

state prisoner population increased by 902,246 during this time period, large increases in the number of Section 1983 lawsuits are understandable.

The decline from 1996 to 1997 in Section 1983 lawsuits can be linked to the enactment of the Prisoner Litigation Reform Act (PLRA) in April, 1996.<sup>11</sup> The filing fee requirements, requirements to show physical injury, and limits on the number of consecutive filings are features of the PLRA that apparently produced the decline in Section 1983

lawsuits. However, even if the PLRA has long-term success in preventing a segment of potential lawsuits from entering the federal courts, we expect that the decline in Section 1983 lawsuits has already “bottomed-out.” Assuming that the proportion of prisoners able to meet the new filing requirements remains relatively constant over time, the number of Section 1983 lawsuits will once again increase simply because the population of state prisoners continues to rise.

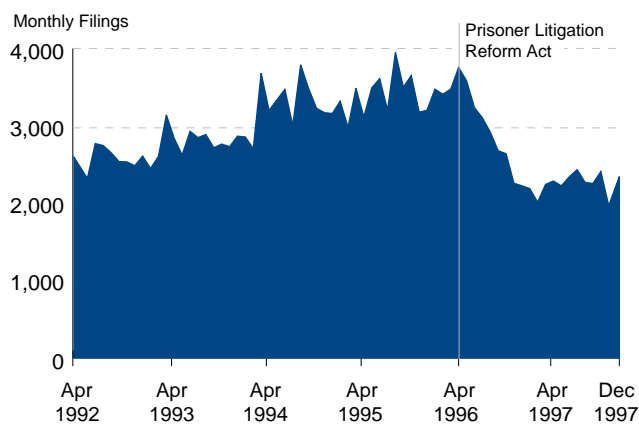
### Endnotes

- <sup>1</sup> *Sanders v. United States*, 373 U.S. 1 (1963); *Fay v. Noia*, 372 U.S. 391 (1963); and *Townsend v. Spain*, 372 U.S. 745 (1963).
- <sup>2</sup> Daniel Meador (1983), “Straightening Out Federal Review of State Criminal Cases” *Ohio State Law Journal*, 44, 273-74.
- <sup>3</sup> After the decision in *Stone v. Powell*, 428 U.S. 465 (1976), state prisoners seeking federal habeas corpus relief on Fourth Amendment grounds of illegal search and seizure would not be granted relief as long as state courts provided the prisoner with the opportunity for full and fair litigation of this claim.
- <sup>4</sup> *Teague v. Lane*, 489 U.S. 288 (1990), states that with two exceptions “new rules” of constitutional law are not applicable to earlier habeas petitions pending review.
- <sup>5</sup> The dynamic regression model is statistically adequate in that it provides satisfactory estimates of the historic number of habeas corpus petitions. The model explains 98 percent of the yearly variance in the number of habeas cases.
- <sup>6</sup> Hanson, R. and H. Daley, 1995a, Federal Habeas Corpus Review, Bureau of Justice Statistics Discussion Paper, NCJ-155504.
- <sup>7</sup> *Cooper v. Pate*, 278 U.S. 546 (1964).
- <sup>8</sup> *Cruz v. Beto*, 405 U.S. 319 (1972), *Estelle v. Gamble*, 429 U.S. 97, 103 (1976), and *Bounds v. Smith*, 430 U.S. 817 (1977).
- <sup>9</sup> The Civil Rights of Institutionalized Persons Act of 1980 (CRIPA) authorized the U.S. Attorney General and the federal courts to certify state administrative grievance procedures and to require exhaustion of procedures so certified before lawsuits can be filed in federal court.
- <sup>10</sup> The dynamic regression model explains 93 percent of the yearly variance in the number of Section 1983 cases.
- <sup>11</sup> Pub. L. No. 104-134, 110 Stat. 1321 codified as amended in scattered sections of 18, 28, and 42 U.S.C.

### The Recent Trend in Section 1983 Lawsuits

The PLRA seems to have resulted in at least a short-term drop in the rate of growth of the number of Section 1983 lawsuits filed. The limitations on filing in forma pauperis, the filing fee provisions, and to a lesser extent the requirement to show injury are the provisions of the PLRA most likely responsible for the recent decrease in Section 1983 lawsuits. The exhaustion requirement probably did not have much of an effect. It can also be seen that the decrease in the number of Section 1983 lawsuits has bottomed out and there is some indication that their numbers are beginning to increase again.

Monthly Section 1983 Lawsuits, 1992-1997



Data Source: Administrative Office of the United States Courts.

# Conclusion

The current analysis supports the “more prisoners, more litigation” observation made by other researchers and practitioners. Results show that yearly increases in state prison populations translate into both short-term and long-term increases in state prisoner litigation. In addition, examining the data in the context of past

congressional reform efforts, shows that changes in habeas corpus and Section 1983 filing requirements do not have a sustained effect on the number of prisoner filings. Unless the U.S. Congress (or the federal courts) can break the fundamental connection between the expanding pool of potential litigators and the rate at

which they actually litigate, any procedural changes will induce only short-lived

decreases in the number of habeas petitions and Section 1983 lawsuits.

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*Managers can rely on statistical analysis techniques to estimate how changes in prison populations will likely affect litigation caseloads. To gain a better understanding of the specific analytical techniques used, those interested can read: To Auger Well: Future Prison Population and Prisoner Litigation by F. Cheesman, R. Hanson, and B. Ostrom (1998). Available upon request from the NCSC.*

## The Court Statistics Project (CSP)

In existence since 1975, the CSP is administered by the National Center for State Courts, with generous support by the State Justice Institute (Grant SJI-91-N-007-O98-1) and the Bureau of Justice Statistics. The CSP receives general policy direction from the Conference of State Court Administrators

through its Court Statistics Project Advisory Committee. Those wishing a more comprehensive review and analysis of the business of state trial and appellate courts are invited to read the CSP’s latest publication, *Examining the Work of State Courts, 1996*.



# CASELOAD HIGHLIGHTS

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