THE FAILINGS AND IMPLICATIONS OF THE PRISON LITIGATION REFORM ACT OF 1995

by

JULIE FOSS

A THESIS

Presented to the Department of Political Science
and the Robert D. Clark Honors College
in partial fulfillment of the requirements for the degree of
Bachelor of Arts

MAY 2023

An Abstract of the Thesis of

Julie Foss for the degree of Bachelor of Arts
in the Department of Political Science to be taken June 2023

Title: The Failings and Implications of the Prison Reform Act of 1995

Approved: *Elizabeth Frost, J.D.*
Primary Thesis Advisor

The American legal system is often viewed as a daunting institution that is inaccessible to the lay-person. The concepts behind filing a lawsuit are not widely understood. Additionally, it is commonplace to assume that the criminal litigation process is exhausted once a person is incarcerated. This mindset, although understandable, leaves those within the American Prison system widely overlooked. Every American citizen is entitled to due process of law and equal protection, and it is not uncommon for a person to file a legal claim while incarcerated. Further limiting the rights of prisoners in America for the sake of avoiding judicial overflow is a questionable approach to prison litigation reform.

The goal of my research and thesis will be to analyze the politics and legal history of the American prison system. The major points will cover the political implications and intentions of the act, the legislative history that led to the PLRA's enactment, and the implications immediately following the enactment as well as additional modern implications. The goal of this research will be to highlight the negative impacts that the PLRA has had on those within the American prison system as well as outline and analyze the legislation process that led up to the PLRA's enactment. Federal Legislative history research as well as a literature review will aid in this process. Civil liberties and rights are often complex and thought of in a moralistic way. While morals and justice-based ideals are important in civil rights legislation, oftentimes morals

are not of the highest consideration when adopting legislation. The prison system in America highlights some of the most overlooked individuals in America; in both a political sense as well as within the legal system.

The implementation of the Prison Litigation Reform Act of 1995 serves as a case study to analyze how the legal system abuses people within prisons. The act itself made it more difficult for those imprisoned to legally file for relief. As a legal and political response to prison overcrowding, the PLRA showcases the government's failure to address issues directly, and instead place further burdens on those with limited legal autonomy. This research will aim to highlight the ways in which the legal system has ignored and abused those within American prisons.

Acknowledgements

I would like to thank my family, especially my mom, for supporting me. Without her support, I would not be in law school. I attribute my hard work and resilience to the resoundingly tough family that came to America to give me a better life.

Table of Contents

List of Figures 7

Introduction 8

Argument 9

Research Questions 10

Methods 11

CONTEXT 14

What is Legislative History Research 14

The Legislation Process 14

LITIGATION 15

What is litigation, and what is the process. 15

Litigation in the Prison Context 16

What is the Prison Litigation Reform Act 18

Federal Legislative History of the Prison Litigation Reform Act 20

Initial Steps 20

Exhaustion Requirement 20

Filing Fees and Physical Injury 20

Legislative History: PL 96–247 (HR 10) 21

Congressional Committee Reports 21

Congressional Hearings 24

Legislative History: PL 104–134 (HR 3019) 26

Congressional Committee Reports 26

Hearings 29

Impacts 30

Literature Review 32

The Least among Us: Unconstitutional Changes in Prisoner Litigation under the Prison Litigation Reform Act of 1995 32

Stacking the Deck: Futility and the Exhaustion Provision of the Prison Litigation Reform Act 34

Imprisoning Rights: The Failure of Negotiated Governance in the Prison Inmate Grievance Process 36

Analysis 38

Potential changes 38

Conclusion 40
Bibliography 41

List of Figures

Figure 1: Civil Pro Se Forms

Figure 2: Civil Rights of Institutionalized Persons Report- Congressional Record Bound (April 3, 1979)

Figure 3: Civil Rights of Institutionalized Persons Report- Congressional Record Bound (April 3, 1979)

Figure 4: Civil Rights of Institutionalized Persons Report- Congressional Record Bound (April 3, 1979)

Figure 5: Civil Rights of Institutionalized Persons Report- Congressional Record Bound (April 3, 1979)

Figure 6: Civil Rights for Institutionalized Persons Hearing-Published (Apr. 29, 1977, May 11, 1977, May 13, 1977, May 18, 1977, May 23, 1977)

Figure 7: Civil Rights for Institutionalized Persons Hearing-Published (Apr. 29, 1977, May 11, 1977, May 13, 1977, May 18, 1977, May 23, 1977)

Figure 8: Civil Rights for Institutionalized Persons Hearing-Published (Apr. 29, 1977, May 11, 1977, May 13, 1977, May 18, 1977, May 23, 1977)

Figure 9: House Consideration of H.R. 667- Congressional Record Bound (Feb 9, 1995)

Figure 10: House Consideration of H.R. 667- Congressional Record Bound (Feb 9, 1995)

Figure 11: House Consideration of H.R. 667- Congressional Record Bound (Feb 9, 1995)

Figure 12: House Consideration of H.R. 667- Congressional Record Bound (Feb 9, 1995)

Figure 13: House Consideration of H.R. 667- Congressional Record Bound (Feb 9, 1995)

Figure 14: Prison Reform: Enhancing the Effectiveness of Incarceration Hearing Published (July 27, 1995)

Figure 15: Prison Reform: Enhancing the Effectiveness of Incarceration Hearing Published (July 27, 1995)

Introduction

The purpose of this research will be to uncover, connect, and highlight aspects of the United States Prison system in ways that are often not analyzed in depth in American society as well as political discourse. One of my goals is to make discourse regarding prison reform accessible to people outside of academia. Oftentimes, information regarding litigation as well as legislative information is difficult to access and analyze. This can create an academic and practice environment that seems intimidating and hostile. One the goals aside from content will be breaking down legal and political works in a way that is palatable. Accessibility within the legal field is extremely important, because many people will have to navigate the system themselves in some capacity during their lives. Understanding the relationships between the legislature and the judiciary can provide insight for those trying to understand legal issues that have political ramifications, and vice versa. These institutions are not isolated from each other. Rather, they share a complex relationship that often is in conflict, yet their cooperation is vital.

The research of this thesis will begin with Federal Legislative History in order to reveal the framework and goals of the PLRA. Following this, a broad literature review will aid in revealing the actual outcomes and implications following the PLRA's enactment. By beginning with the legislative intent of the PLRA, the issues and failures following its enactment become extremely stark in comparison. Legislation can begin with a very different purpose in comparison to the result, and this paper aims to highlight the imperfections of the American Legislature and Judiciary systems, and the dire consequences of those imperfections. Failures within the American political and legal system are not always a result of malicious intent. Unraveling the more complex causes of specific failures can actually make creating substantial change more approachable. Moving backwards in time can be an extremely valuable tool, and

the legislative process can provide the tiny details that may have never been uncovered if only researching post enactment. Overall, I hope to elaborate upon political thought already available on the PLRA as well as create my own analysis of the act itself. Additionally, I hope to provide resources on understanding the basics of legislation and litigation.

Argument

Legal questions regarding prison litigation as well as topics of discourse such as overcrowding, and reform are extremely multifaceted and can have very complex explanations and relationships. For my research, I hope to focus on showcasing the relationship between the United States' outlook on crime, prison overcrowding, and the disenfranchisement of prisoners through the buildup and implications of the Prison Litigation Reform Act of 1995. The legislative history of the PLRA may reveal innocent goals and reasonings behind the policies, but the ramifications created a serious burden upon those seeking redress within prison. Many of the restrictions created by the PLRA make the litigation process for prisoners even more burdensome such as the exhaustion requirement and filing fees. Failure to comply with the multiple burdensome requirements can effectively bar those seeking to sue for civil rights violations. There are many Constitutional implications for seeking redress as a citizen of the United States, and I hope to showcase how these implications can be often overlooked for those within prisons. Regardless of criminal status, the Constitution provides protections and rights, and understanding the additional hurdles that the PLRA imposes showcases how mistreated those within prison walls are.

Research Questions

The research questions I will be building my thesis upon will serve as points of connection between varying aspects of prison litigation, legal jurisprudence and the legislative process.

1. What was the political landscape during the years leading up to the enactment of the Prison Litigation Reform Act?
2. How does the Legislative History reveal the initial goals of the PLRA?
3. In contrast, how do the implications challenge the legislative intent? What are the most burdensome requirements of the PLRA that best highlight its failings?

Methods

The research done will attempt to answer the question of how the Prison Litigation Reform Act of 1995 has impacted the prison system in the United States, and how justice within prisons was altered as a result. I hope to keep the framework of my analysis based on understanding the legislative process, and the importance of that process. Insight into the legislative process before the official enactment of the PLRA will provide valuable context. The legislative history is the best way to uncover intent, unclear provisions, and the overall goals of the legislatures at the time. For attorneys, legislative history research can provide insight into the meaning or intended purpose of an unclear provision of a specific statute. Although this is the most common purpose of conducting such research, gaining insight into multiple provisions of an act can aid in general, non practice based research. I hope to frame these legal questions through a political and governmental lens, because political theory will allow me to include a broader analysis to these narrow and specific questions of law. Prison reform discussion can be approached in many different ways, most of which include a deep understanding of theories of rights, power, oppression, as well as more specific governmental theories. Understanding these areas of theoretical debate will add depth and nuance to my legal arguments, and provide the groundwork for implications. Law is at its core a facet of power, and although it can appear deeply bureaucratic, any major shift of power away from those already deprived of legal agency must be analyzed in a holistic way. Beginning the research at the creation of the PLRA will allow these lofty concepts of power and law to be simplified and outlined effectively with procedure and concrete actions that can be analyzed. Although this research is specific to prison litigation, much of the process can also serve to function as a roadmap for the legislative process. Everyday peoples' lives are impacted every day by laws and enactments, and understanding how

and why Congress legislates specific laws is an important concept to grasp as an informed United States citizen.

In order to conduct this legislative history, the statute itself must be analyzed, and key phrases, words, or provisions must be identified. These act as tools for navigation, because the legislative process is extremely lengthy and detailed. Using the key words or phrases, all of the public laws leading up to the PLRA's enactment can be viewed, and narrowing these down can pinpoint how and when the key phrases were introduced. These public laws will yield bill numbers that can be searched via a legislative database. Once narrowed down by bill number, specific congressional reports, hearings, and more will be available to search though and analyze. This process can be repeated for different phrases, provisions of the statute, or general concepts. The more detailed the research, the more valuable insight the legislative history research will provide. The broad phrases that will be most relevant to this research are "exhaustion requirement", "physical injury", and "attorney fees." These phrases directly relate to the most controversial and limiting provisions of the PLRA.

The second method in which this research will be done is by a literature review on sources that touch on the political implications of the PLRA, as well the political history of justice within the prison system. Much of my research will include close reading of many different scholarly articles, case briefs, as well as other documents. This close reading and analysis will allow me to synthesize the information in a way that can answer my research questions. Research in this field can vary widely, depending on the nature and specific goals. After understanding the legislative intent and context, a broad literature review can be utilized to grasp the opinion of other scholars in the field, and their ideas on the ramifications of the statute, after its impacts could be studied. The purpose of this secondary section is to create a basis for

comparison. The analysis between newly proposed legislation, and the impacts afterwards highlight the failures of the PLRA. The stark contrasts also highlight a shift in political attitudes over time once the PLRA had been enacted. My goal in terms of methodology is to create a concrete timeline, beginning with the PLRA's proposal, and ending with an analytical criticism of the impacts thus far on individuals within the American prison system.

CONTEXT

What is Legislative History Research

The Legislation Process

Understanding the legislative process is key to utilizing its importance when analyzing the implications and impacts of a statute. Although very complex, and often difficult to fully comprehend, the legislation process can be broken down into basic steps that best show the chronology of a proposed bill, and how the steps in between proposal and enactment can shed valuable light upon the statute in question. All of these steps are first preceded by the sponsoring of a bill. Any House of Representative member or Senator can sponsor a bill. Once sponsored, the bill then becomes assigned to a committee[1]. While all aspects of the legislation process are important and vital to the process, there are key components that best uncover Congressional intent. The first of these key components are hearings. Although not considered the most valuable of all the legislative history resources, hearings provide testimonies on proposed legislation before the bill gets assigned to a committee[2]. For the purpose of statute interpretation by practicing attorneys, these hearings are less valuable because they include more opinion, and less direct Congressional intent. For my research however, knowing the initial purposes and opinions of those who proposed the PLRA will shed light on the initial policy goals, and offer groundwork for the analysis following.

---

[1] "Guides: Legislative History Research Guide: Getting Started & Key Resources." Getting Started & Key Resources - Legislative History Research Guide - Guides at Georgetown Law Library, guides.ll.georgetown.edu/legislative_history. Accessed 13 May 2023.

[2] Georgetown Law Library

The second step a proposed bill must go through are Congressional Committee Reports. These are considered the most important and informational documents of the legislative process. The committee reports contain the explicit language used by Congress during the drafting of a bill. The committee also includes their recommendations, the steps preceding the report, and the reasons Congress wished to enact the proposed law[3]. This information is highly valuable because oftentimes the language of a statute is very straightforward, and does not provide nuance. These reports however shed light on how Congress intended the statute to function, and the results they wished to see.

The final key step of the legislative process is debates. Similarly, although considered less valuable than Congressional Committee Reports, debates reveal points of contention or vagueness[4]. When compiling these various resources, the intent and purpose of a statute or specific provisions can become clearer. Additionally, for the purposes of this specific research, the overall intent and goals of Congress can be more clearly analyzed in comparison to the policy impacts the statute had post enactment.

LITIGATION

What is litigation, and what is the process.

Litigation generally refers to the process of preparing and trying a case in court. There are countless areas of law, but litigation is mainly split into two overarching subgroups: civil litigation and criminal litigation. Aside from the substantive rules governing the case being tried before the court, litigation is regulated by the Federal Rules of Civil Procedure, the Federal Rules

[3]Georgetown Law Library

[4] Georgetown Law Library

of Criminal Procedure, and the Federal Rules of Appellate Procedure[5]. State and local regulations will also impact the litigation process, depending on the jurisdiction of the case. Because this research is focused on criminal proceedings, the explanations following are in regard to the Federal criminal justice system for uniformity of jurisdiction. The primary steps of a criminal trial are in order as follows. Initial arraignments are when the defendant appears in court and a judge informs them of their rights, outlines the criminal charges, and decides if bail is appropriate[6]. The second step is discovery, in which the prosecution and defense will gather evidence, familiarize themselves with the case, and prepare their arguments[7]. The third step is plea bargaining, in which the defendant can plead guilty or not guilty. If the defendant pleads not guilty, a trial proceeds[8]. Preliminary hearings and pre-trial motions serve to streamline the process, in which attorneys can ask the court to decide on aspects of the case before the trial begins[9]. Arguably the most well-known step, the trial, includes the defense and prosecution presenting evidence and making arguments, after which, a jury will decide if the defendant is guilty or not guilty. After a conviction, the defense can make certain motions. Finally, a defendant will be officially sentenced[10].

Litigation in the Prison Context

Once sentenced and incarcerated, those within the United States Prison system are often forgotten and treated as though their legal rights become stagnant. This, however, is far from the truth. Stripping someone of their rights and liberties is a delicate process that should be regarded

[5] "Litigation." *Legal Information Institute*, www.law.cornell.edu/wex/litigation.
[6] "Steps in the Federal Criminal Process." *U.S. Attorneys | Steps in the Federal Criminal Process | United States Department of Justice*, 6 Jan. 2023, www.justice.gov/usao/justice-101/steps-federal-criminal-process.
[7] U.S. Dept. of Justice
[8] U.S. Dept. of Justice
[9] U.S. Dept. of Justice
[10] U.S. Dept. of Justice

as an extremely important matter. Once within a prison, no person should be treated as though their autonomy as a United States citizen is completely absolved. Just like outside of prison walls, people within prison can face adversity in which they have a legal entitlement to relief. It is not uncommon to see less than ideal circumstances within prisons, and if someone has had their civil liberties violated, they have a legal right to file for redress. Prisoners have the right to be free from cruel and unusual punishment, the right to religious freedom, as well as equal treatment under the 14th Amendment[11]. Although the Constitutional protections are more limited to incarcerated persons, if faced with unnecessary force, or treatment limiting their right to religious freedom, there is a right to file a claim of discrimination[12]. A claim of discrimination would be filed as a lawsuit within the United States District Court as a "Complaint For Violation of Civil Rights." Once an imprisoned person decides to file a claim, the restriction imposed by the Prison Litigation Reform Act comes into play.

[11] "U.S. Commission on Civil Rights." *Getting Uncle Sam to Enforce Your Civil Rights*, www.usccr.gov/files/pubs/uncsam/complain/lawenf.htm.
[12] USCCR

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____ Division

Case No. _____

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

Figure 1: Civil Pro Se Forms [13]

What is the Prison Litigation Reform Act

The Prison Litigation Reform Act was enacted as a response to an influx of claims being filed from within the United States Federal prison system. The act serves as a limitation upon prisoners so claims that are deemed meritless are precluded from ever reaching the judicial system. The primary limiting function of the PLRA is the exhaustion requirement[14]. This provision requires anyone seeking redress to completely exhaust all administrative procedures

[13] "Complaint for Violation of Civil Rights (Prisoner)." *United States Courts*, www.uscourts.gov/forms/pro-se-forms/complaint-violation-civil-rights-prisoner.

[14] 42 U.S.C §1997e

before making an official claim. For each claim an individual wishes to make, they must file an administrative grievance, and then appeal at each administrative level in order to file an official claim[15]. If the court determines that this requirement was not satisfied, it will dismiss the case without prejudice, so the individual may attempt to exhaust the administrative remedies and file again once the statute of limitations has passed[16]. Another aspect that limits individuals in prison is the filing fees. The filing fees for a complaint must be paid by the prisoner in full, either up front or in monthly installments[17]. If a complaint is dismissed three times by the court, the next complaint the individual files must be paid up front, in full. Finally, if filing for emotional or mental distress, an individual must also demonstrate a sufferance of physical injury[18]. The qualifications as to what qualifies as a sufficient injury will differ across courts, but a lack of physical injury will always bar the individual from compensatory damages.

[15] 42 U.S.C §1997e
[16] 42 U.S.C §1997e
[17] 42 U.S.C §1997e
[18] 42 U.S.C §1997e

Federal Legislative History of the Prison Litigation Reform Act

Initial Steps

For this research, I will use Westlaw and ProQuest Legislative Insight to create legislative history compilation.

In order to access the legislative documents, the specific public laws that created the statute need to be identified. This can be done at the bottom of the statute on Westlaw, in which all of the public laws in relation to the statute are listed chronologically. As stated previously, the key phrases I will be using to identify relevant public laws are "exhaustion," "filing fees," and "physical injury." Once identified, the public law numbers will provide access to the legislative documents.

Exhaustion Requirement

The public law relevant to the term exhaustion is PL 96–247 (HR 10). This is the original bill that was first introduced in 1980.

Filing Fees and Physical Injury

The phrases "filing fees" and "physical injury" were introduced in the public law PL 104–134 (HR 3019) in 1994. This public law is an omnibus law that also contains many other bills in the legislation process.

Both of these public laws will act as citations to access the specific legislative history documents. This search will be done on ProQuest Legislative Insight. The first public law was introduced during the 96th Congress, and the second during the 104th. Once I identified the public laws that were relevant to my terms, ProQuest Legislative Insight allowed me to search the law within the Congressional year, yielding all of the documents needed.

Legislative History: PL 96–247 (HR 10)

Congressional Committee Reports

The excerpts below are procured from the official Bound Congressional Record. The Bound Record is an official collection of every proceeding of Congressional Committees. There are both House of Representative and Senate Committees. These reports discuss proposed legislation or issues under investigation.

In regards to Public Law 96-247 (HR10), The House of Representatives Congressional Committee submitted a Conference Report on April 22, 1979. The Committee title was the Committee on the Judiciary. The House Conference Report shed light on the initial frustrations that led up to the proposal of the bill. At the time of the 96th Congress, the relevant bill was titled "Civil Rights of Institutionalized Persons Act." The bill was comprised of two major actions. The first was that the Attorney General should have standing to sue States if the Constitutional rights of prisoners were being deprived by State action. The second was that if an individual prisoner sought to make a claim, they would have to exhaust all administrative remedies before an official claim for relief could be submitted[19]. Figures 2 through 3 are from this Conference Report submitted by the House Committee. Although the House Committee on the Judiciary had suggested amendments to the proposed bill, the report communicated strong support for the proposed legislation's purpose. The committee emphasized that limiting individual suits would allow the Federal Judiciary to properly rule on articulate claims brought by the Attorney General. Additionally, it was noted that other Federal measures were being undertaken in order to increase the quality of United States Federal prisons.

[19] 125 Cong.Rec. * (bound ed. May 23, 1979) Debated, Amended, Passed House), available at ProQuest Legislative Insight.

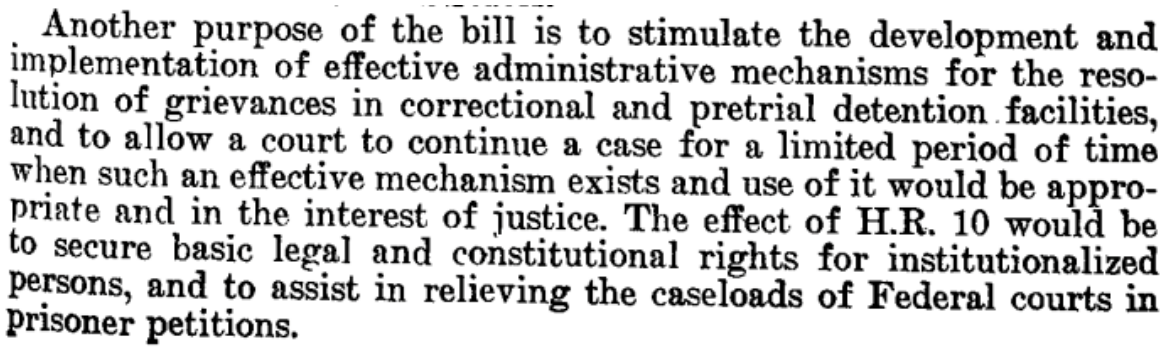

Another purpose of the bill is to stimulate the development and implementation of effective administrative mechanisms for the resolution of grievances in correctional and pretrial detention facilities, and to allow a court to continue a case for a limited period of time when such an effective mechanism exists and use of it would be appropriate and in the interest of justice. The effect of H.R. 10 would be to secure basic legal and constitutional rights for institutionalized persons, and to assist in relieving the caseloads of Federal courts in prisoner petitions.

Figure 2: Civil Rights of Institutionalized Persons Report- Congressional Record Bound (April 3, 1979)[20]

Figure 2 is sourced from the introduction written by the committee, describing the amendments made by the House, and to reiterate the purpose of HR 10. One of the objectives of this bill was to reduce the strain on the Federal judiciary, and instead rely on administrative outlets. It may have been assumed that these administrative options were robust enough to support a high volume of grievances. In the introduction, the House acknowledges the need for accessible justice within American institutions. The House argues that the Federal Judiciary is not equipped to handle a massive caseload from individual prisoners, and that the Attorney General should be granted standing to sue to protect prisoners from a pattern of practice caused by State action that deprives them of Constitutionally granted rights[21].

Although it was widely accepted throughout the report that the Federal Judiciary cannot handle the volume of cases coming in, questions regarding alternative burdens were brought up. One of the largest mitigating factors emphasized by the House Committee on the Judiciary was if a State lacked the proper administrative remedies for prisoners to utilize, the Attorney General

[20] 125 Cong.Rec. * (bound ed. May 23, 1979) Debated, Amended, Passed House), available at ProQuest Legislative Insight.
[21] 125 Cong.Rec. * (bound ed. May 23, 1979) Debated, Amended, Passed House), available at ProQuest Legislative Insight.

would be granted standing to sue[22]. This function would serve to streamline the process of preventing inadequate State action, so that individuals would not have to file claims in an extremely high volume.

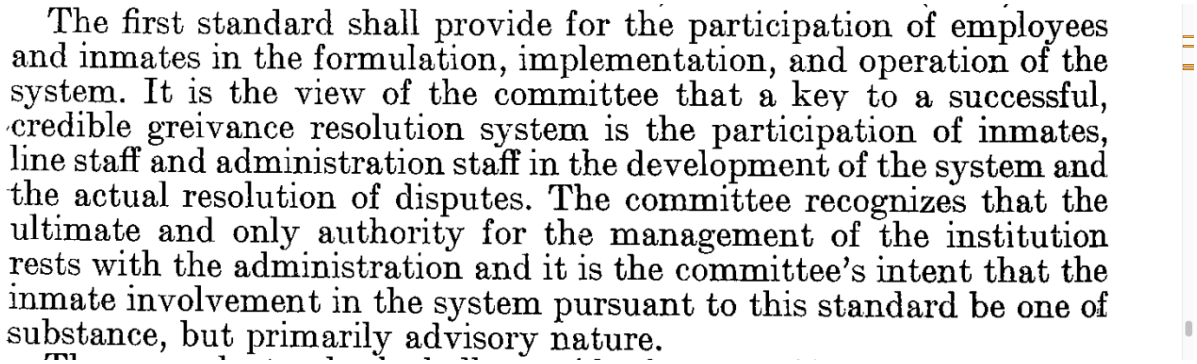

The first standard shall provide for the participation of employees and inmates in the formulation, implementation, and operation of the system. It is the view of the committee that a key to a successful, credible greivance resolution system is the participation of inmates, line staff and administration staff in the development of the system and the actual resolution of disputes. The committee recognizes that the ultimate and only authority for the management of the institution rests with the administration and it is the committee's intent that the inmate involvement in the system pursuant to this standard be one of substance, but primarily advisory nature.

Figure 3: Civil Rights of Institutionalized Persons Report- Congressional Record Bound (April 3, 1979)[23]

Figure 3 is found within the analysis section of the report, in which each provision of the proposed bill is talked about in depth. This statement is found in the analysis of the exhaustion requirement. The analysis emphasizes the strain relieving possibilities when administrative remedies are properly utilized. It seems that the groundwork for success lies in active participation from all individuals involved. The committee's belief and optimism towards the administrative capabilities within the Federal prison system is showcased, and when implemented properly, administrative outlets could gain a high level of credibility from the incarcerated. The overall goal of the provision is one of efficiency and streamlined redress.

Overall, when analyzing the sections related to the exhaustion requirement within the Congressional Committee reports, there is a high level of responsibility placed upon the administrative remedies available to prisoners. There seems to be an acceptance that the

[22] 125 Cong.Rec. * (bound ed. May 23, 1979) Debated, Amended, Passed House), available at ProQuest Legislative Insight.
[23] 125 Cong.Rec. * (bound ed. May 23, 1979) Debated, Amended, Passed House), available at ProQuest Legislative Insight.

administrative outlets already have a beneficial grievance method, and the proposed legislation would take advantage of that, instead of overly burdening the Federal Judiciary.

Congressional Hearings

In contrast to the committee reports, much of the content regarding exhaustion within the hearings convey overall dissatisfaction with the provision. Although some support was shown for administrative remedies, many of the statements disfavored the provision and asked for remedies.

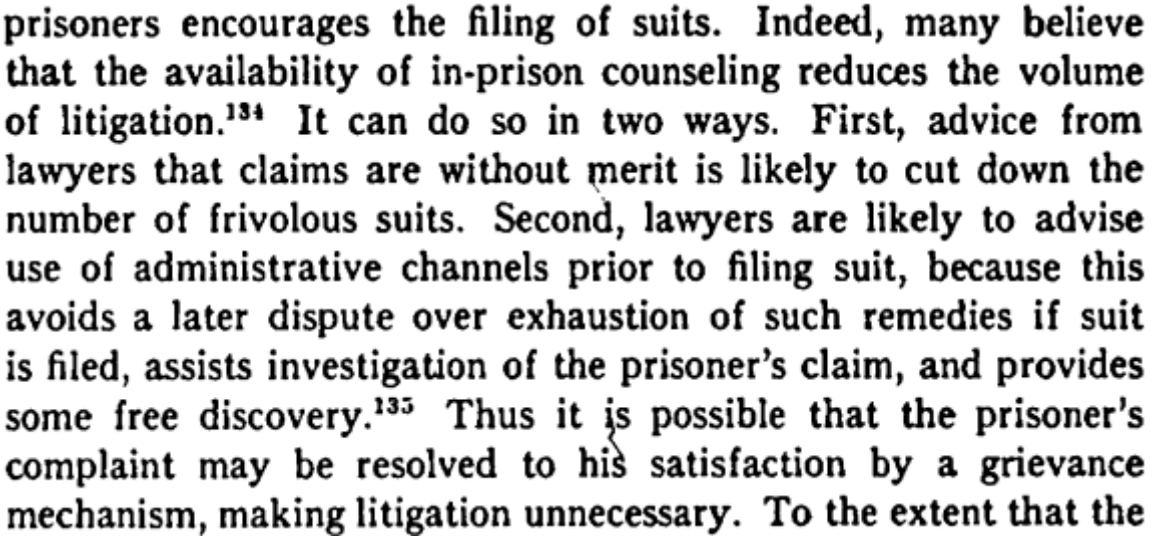
This statement emphasizes the inability of the requirement of administrative remedies to reduce frivolous claims. Increased steps in the overall process are not serving the purpose of lightening the case load. Additionally, this statement points out that inequity could arise from the differing efficacy of administrative resources in each state.

Experience shows that, contrary to the intended purpose, an exhaustion requirement is likely to result in an increased burden on the courts. Certainly Congress does not intend this. If section 4 is enacted, each civil rights case brought by a prisoner will involve a new phase of litigation on procedural matters before the court ever reaches the merits of the case. As I said earlier, now the courts are not holding hearings on many of these cases and this type of requirement is likely to increase the burden on the courts because courts will have to hold an additional hearing to determine whether the administrative remedy is speedy. and whether it's available in each case. An exhaustion mechanism will not weed out cases of constitutional merit from those which are frivolous. Ultimately, courts of law will have to make that determination. An exhaustion requirement will only delay court action and final disposition on the merits

Figure 7: Civil Rights for Institutionalized Persons Hearing-Published (Apr. 29, 1977, May 11, 1977, May 13, 1977, May 18, 1977, May 23, 1977)[24]

[24] Civil Rights for Institutionalized Persons, Hearing Before the Subcom on Courts, Civil Liberties, and Administration of Justice, Committee on Judiciary. House, 95th Cong. (1977), available at ProQuest Legislative Insight.

Similarly, to the previous statement, the speaker here questions the exhaustion requirement's ability to actually reduce the number of frivolous claims. The requirement essentially adds more necessary steps that once a claim reaches the Federal Judiciary, will have to be reviewed and determined upon. Due to the necessary exceptions to the exhaustion rule, hearings would be needed in order to determine if a claim could bypass the requirement. The more steps placed upon the court system may not serve the purpose of reducing the overall burden. The relation between administrative exhaustion and judicial merit is not strong enough to support the requirement and added burden.



prisoners encourages the filing of suits. Indeed, many believe that the availability of in-prison counseling reduces the volume of litigation.[134] It can do so in two ways. First, advice from lawyers that claims are without merit is likely to cut down the number of frivolous suits. Second, lawyers are likely to advise use of administrative channels prior to filing suit, because this avoids a later dispute over exhaustion of such remedies if suit is filed, assists investigation of the prisoner's claim, and provides some free discovery.[135] Thus it is possible that the prisoner's complaint may be resolved to his satisfaction by a grievance mechanism, making litigation unnecessary. To the extent that the

Figure 8: Civil Rights for Institutionalized Persons Hearing-Published (Apr. 29, 1977, May 11, 1977, May 13, 1977, May 18, 1977, May 23, 1977)[25]

Unlike the previous two hearing statements, this statement showcases possible benefits of administrative remedies. With the exhaustion requirement, an addition of administrative services could aid those seeking redress do so in a more efficient manner, and avoid actions they may not need to take. With the aid of attorneys, prisoners could better understand and utilize

[25] Civil Rights for Institutionalized Persons, Hearing Before the Subcom on Courts, Civil Liberties, and Administration of Justice, Committee on Judiciary. House, 95th Cong. (1977), available at ProQuest Legislative Insight.

administrative remedies and routes towards redress for their claims. Avoiding litigation to begin with can better suit certain claims, and those with claims better suited for grievance remedies can avoid unnecessary time wasted and energy towards receiving the remedy they seek.

Both the Congressional Committee Report and the hearings offer mixed support for an exhaustion remedy. Those on the committee however, have the most compelling outlooks, due to their commitment to the bill. The critiques from the hearings however provide interesting issues that were highlighted, even in the preliminary phases of the bill.

Legislative History: PL 104–134 (HR 3019)

Congressional Committee Reports

The previous public law died in Congress. During the 96th Congress, the previous proposed bill did not get enacted. Public laws that were not enacted during the congressional period it was proposed can get reintroduced under a new public law number. Here, the past related bill was reintroduced during the 104th Congress[26]. In these legislative documents, the focus shifted away from the exhaustion requirement, and discussions around filing fees emerged. The exhaustion requirement, however, was still a point of contention, especially in the hearings. Also, the overall attitude towards reducing the volume of claims is highly emphasized again.

---

[26] *Libguides: Federal Legislative History: Basics*. Basics - Federal Legislative History - LibGuides at American University Washington College of Law. (n.d.). https://wcl.american.libguides.com/c.php?g=563252&p=3877952

(b) PRISONER'S STATEMENT OF ASSETS.—Section 1915 of title 28, United States Code, is amended by adding at the end the following:

"(f) If a prisoner in a correctional institution files an affidavit in accordance with subsection (a) of this section, such prisoner shall include in that affidavit a statement of all assets such prisoner possesses. The court shall make inquiry of the correctional institution in which the prisoner is incarcerated for information available to that institution relating to the extent of the prisoner's assets. The court shall require full or partial payment of filing fees according to the prisoner's ability to pay.".

Figure 9: House Consideration of H.R. 667- Congressional Record Bound (Feb 9, 1995)[27]

This section of the committee report states an amendment made in regards to filing fees required by those who want to file a claim. Upfront, this is an inquiry into the individual's assets to determine how the individual has to pay for the filing fees.

This provision added further monetary stipulations regarding the process of filing for relief. Attorneys fees would be assumed not granted unless the outcome of the proceedings demand otherwise. This provision seems extremely limiting, and further emphasizes Congress' outlook on the quality of cases being filed. Issues regarding the discouragement of attorney involvement to represent incarcerated peoples is not discussed.

Elaborating on the additional restrictions regarding attorney fees, the ideals behind the need are articulated. The committee reveals their outlook on financial incentives, implying many cases are brought for financial benefit.

[27] 141 Cong.Rec. * (daily ed. Feb. 9, 1995) House consideration of H.R. 667), available at ProQuest Legislative Insight.

oner possesses. The new subsection further directs the court to make inquiry of the correctional institution in which the prisoner is incarcerated for information available to that institution relating to the extent of the prisoner's assets. This is a reaonsble precaution, because candor by prisoners on this subject cannot reliably be expected. The new subsection concludes by stating that the

Figure 12: House Consideration of H.R. 667- Congressional Record Bound (Feb 9, 1995)[28]

The committee then returns back to the issue of filing fees, and the need for a financial investigation upon the prisoner filing. The reasoning behind this requirement is supported by the opinion that incarcerated people cannot be taken for their word. This is section particularly emphasizes the committee's hostility towards frivolous claims made within the prison system.

The section in which this paragraph was sourced discussed the overall perceived need for the legislation. The overall consensus was that frivolous lawsuits were taking up too much time and too many resources, and the Federal Judiciary could not effectively do their jobs. It appears as though the goal of reducing crime was a primary function of the legislation in general.

Overall, there is far less dissent or negative attitudes for the proposed legislation. Contrastingly, the amended provisions actually further restrict the ability for prisoners to file a claim for relief. This demonstrates an overall shift in outlook when comparing the initial public laws that began the process of this legislation fourteen years prior.

[28] 141 Cong.Rec. * (daily ed. Feb. 9, 1995) House consideration of H.R. 667), available at ProQuest Legislative Insight.

Hearings

> Section 702 directs a court to dismiss a prisoner § 1983 suit if the court is satisfied that the action fails to state a claim upon which relief can be granted or is frivolous or malicious. A rule of this type is desirable to minimize the burden on states of responding unnecessarily to prisoner suits, which typically lack merit and are often brought for purposes of harassment or recreation.

Figure 14: Prison Reform: Enhancing the Effectiveness of Incarceration Hearing Published (July 27, 1995)[29]

This statement speaks on the general goal sought by the legislatures at the time. There is a clear and obvious frustration towards suits brought by prisoners that they deem meritless. It seems as though there is also a perceived issue of claims being brought for the purpose of harassment.

> **In essence, the point of these amendments is to insure that prisoners will be fully liable for filing fees and costs in all cases, subject to the proviso that prisoners will not be barred from suing because of this liability if they are actually unable to pay. We support this reform in light of the frequency with which prisoners file frivolous and harassing suits, and the general absence of other disincentives to doing so.**

Figure 15: Prison Reform: Enhancing the Effectiveness of Incarceration Hearing Published (July 27, 1995)[30]

The statement above elaborates upon the filing fee requirement, making it clear that the purpose of the amendment is not to bar prisoners from seeking redress, and those who cannot pay in full will have alternative options. Although it is clear that the exhaustion requirement is the largest point of contention within the proposed legislation, details regarding the filing fees showcase the overall attitude and outlook of Congress at the time.

[29] Prison Reform: Enhancing the Effectiveness of Incarceration, Hearing Before the Committee on the Judiciary. Senate, 104th Cong. (1995), available at ProQuest Legislative Insight.
[30] Prison Reform: Enhancing the Effectiveness of Incarceration, Hearing Before the Committee on the Judiciary. Senate, 104th Cong. (1995), available at ProQuest Legislative Insight.

In sum, this small look into the legislative process provided immense insight into the specific provisions of the Prison Litigation Reform Act before its official enactment. The examples above showcase the overall support for reducing case volume, as well as placing more responsibility on administrative outlets for redress. In the early states, there was more skepticism towards the administrative exhaustion requirement, and many committee members and members of Congress questioned its efficacy towards the goal of reducing case volume. Multiple Congress members questioned how requiring more steps pre-litigation for Federal courts to review would serve the intended goal. Additionally, there were many concerts regarding the ability for the exhaustion requirement to target and remove frivolous claims in comparison to meritorious claims.

Over time, the support for the exhaustion requirement grew, and amendments such as the filing fee requirements also enjoyed a higher level of support. This growth of support for litigation limiting factors showcase the overall trend in attitude regarding prison reform, and how prison litigation should be best handled. The major goals are straightforward and understandable. Congress wants to limit the number of cases in the Federal judiciary that could be solved with administrative remedies. Reducing harassment claims also became a major goal, so that the judiciary could focus on those who required a case in order to receive proper redress. Although these goals and purposes are understandable, and the intention of Congress is clearly not that of malice, the implications following the PLRA's enactment tell a different story.

Impacts

The impacts of the PLRA are continuously developing because the law is still in effect. Although arguments for the beneficial nature of the impacts can be made for and against, they are observable, nonetheless. After the PLRA was enacted, the number of cases filed by prisoners

dropped dramatically. In 2006, the numbers dipped to its lowest following the enactment: 9.6 filings per 1,000 prisoners[31]. In comparison, in 1995, there were 24.5 filings per 1,000 prisoners[32]. Although it is likely that the dramatic dip in cases was due to the PLRA, case filings per 1000 prisoners were on a declining trend during the years leading up to the PLRA.

One goal of the PLRA was certainly to decrease the overall number of suits brought by prisoners. This goal was clearly accomplished. The other goal of the PLRA was to also reduce the number of frivolous claims that did reach the court. Due to increased requirements and methods of removing frivolous cases, it would be expected that cases that reached the court would be meritorious, thus accomplishing the goals of the PLRA. This, however, is not the case. According to a report put out by the University of Michigan, although the number of trials has decreased overall, the number of plaintiff victories has not[33]. Even after a case reaches the court, government defendants are winning at increasing rates, settlements have decreased, and plaintiffs are winning in trial far less[34]. It is obvious that although prisoners' access to the court was decreased following the PLRA, the proportion of cases that have reached the courts are not increasingly meritorious. This outcome contradicts one of the main goals of the legislation, and emphasizes that the burdens placed on prisoners is not justified.

[31] Data *Update*. Incarceration and the Law. (n.d.). https://incarcerationlaw.com/resources/data-update/#TableA
[32] Data *Update*
[33] Margo *Schlanger*. Margo Schlanger | University of Michigan Law School. (n.d.). https://www.law.umich.edu/facultyhome/margoschlanger/Pages/default.aspx
[34] Margo *Schlanger*

Literature Review

For the purposes of this research, the scholarly works written after the PLRA's enactment will best serve the timeline analysis I wish to create. The Prison Litigation Reform Act was passed by the United States Congress in 1995, hence much of the relevant literature and analysis was produced afterwards. It also took several years for the impacts of the PLRA to surface and its consequences to be analyzed. As the outlined requirements of the PLRA began to impact prisoners, the differences between the predicted outcome and reality began to become evident. The enactment of the PLRA serves as a case study of the continual disenfranchisement of people in American prisons. Although the purpose and wanted outcomes of the PLRA reflected the frustrations of Congress and the Federal Judiciary at the time, the impacts following its passing reveal that prisoners faced serious consequences as a result. Literature discussing these specific consequences are effective in mirroring the generalized scholarly discussion of prison reform and prisoner disenfranchisement.

The Least among Us: Unconstitutional Changes in Prisoner Litigation under the Prison Litigation Reform Act of 1995

This article written by Julie Riewe outlines the constitutional issues regarding the PLRA, and how this has impacted those within the United States prison system. The country's general outlook on crime has evolved over time, and this is reflected in the PLRA. Beginning around 1980, the federal outlook on crime began to be far stricter, and proposed and enacted legislation reflected that[35]. This eventually led to an increase in prisoners across the country. Due to this increase, there was a corresponding increase in prisoners within federal prisons seeking

[35] Riewe, Julie M. "The Least among Us: Unconstitutional Changes in Prisoner Litigation under the Prison Litigation Reform Act of 1995." *Duke Law Journal*, vol. 47, no. 1, 1997, pp.117.

litigation. The PLRA prevents the court from providing prisoners relief for unfit conditions that are not a direct violation of law. Attorney fees are also blocked from settled cases that lack a violation of settled law. These provisions actively deter qualified professionals from pursuing serving those in the prison system[36]. This article effectively communicates how the PLRA burdens prisoners in seeking litigation.

The author begins her scholarly analysis with a simple claim: the attitude of crime and punishment starting fifteen years prior to the PLRA's enactment shifted towards being "tough on crime." This attitude shift led to an increase in prison population, in turn causing a higher rate of prisoner litigation[37]. As analyzed previously, it is clear Congress had a strong motive to reduce this volume of cases, and thus, the PLRA came to fruition. The author then continues to outline the main points of contention in the legislation, and brings to light possible Constitutional violations. Questions arise as to whether the filing fees requirements, including the three strike rule implicate a fundamental right for inmates to access the courts[38].

A critical question regarding the PLRA is the possible Equal Protection violation imposed by the provisions regarding filing fees. Before the legislation's enactment, prisoners could submit an affidavit of poverty, allowing them to make a claim "without prepayment[39]." The PLRA created a further stipulation, that prisoners must pay filing fees in full, while other non-imprisoned "indigent litigants" could still file for the waiver[40]. An Equal Protection issue could be implicated because of the classification between indigent litigants and imprisoned indigent litigants[41]. It then becomes a question of whether this classification could implicate due

[36] Riewe 118
[37] Riewe 119
[38] Riewe 120
[39] Riewe 125
[40] Riewe 126
[41] Riewe 126

process, and if a fundamental right has truly been burdened. The author also supports this analysis by claiming "there is a need for balance between the principle of equal protection and the reality of inevitable legislative classification[42]." Although this is an issue that would need to be determined by the United States Supreme Court, the author proposes an argument worth consideration, and further emphasizes that those within prisons are a class of individuals that deserve the careful analysis of rights, when those rights or legal opportunities are being limited.

The author also dissects the implementation of the "three strikes rule," in which a prisoner cannot file a claim, even if constitutional, if they have had three claims dismissed prior. The cases can be dismissed for being malicious, frivolous, or for failing to state a claim[43]. The only exception to this is if the inmate is in danger of physical injury. While this requirement does serve the purpose of reducing claims, the scope of dismissals is too wide to bar future constitutional claims that do not involve physical danger. It can be argued that this rule unduly burdens prisoners' right to access to the courts and should be a Constitutional issue analyzed under intermediate scrutiny or an undue burden analysis[44].

The two arguments above highlight the many concerns regarding some of the provisions of the PLRA. Although governmental interest is a large consideration, the possible Constitutional implications raise serious red flags as to the nature of the PLRA.

Stacking the Deck: Futility and the Exhaustion Provision of the Prison Litigation Reform Act

In an article by Eugene Novikov, the consequences following the enactment of the PLRA are analyzed. More specifically, the author focuses on the exhaustion requirement, and the dire

[42] Riewe 127
[43] Riewe 147
[44] Riewe 148

consequences it had on prisoners. One of the primary arguments made in regard to the exhaustion provision is that prisons are given far too much discretion[45]. The PLRA contains no safeguards against the prison and their methods of procedure, putting prisoners at risk for unequal standards of what administrative exhaustion is. Historically, prior to the enactment of the PLRA, a judge could delay a case for a period of time if they believed speedy administrative alternatives were available and that "such a requirement would be appropriate and in the interest of justice[46]." The judge based discretion gave prisoners seeking redress an opportunity to avoid administrative grievances if the option was not speedy or in the interest of justice. If the prison did not have grievance procedures deemed adequate, it would not be a complete barrier to a prisoner seeking redress. Currently, the court does not inquire into the procedural remedies available to the individual filing a claim, creating unequal footing between prisons.

The author further articulates upon the negative impacts the exhaustion requirement and its inflexibility has had on prisoners seeking to file a claim for relief. The Supreme Court case *Booth v. Churner* demonstrates the overarching issues with the exhaustion requirement, ruling that even if the administration did not have the power to grant the type of relief requested, the plaintiff could not be granted an exception to the exhaustion requirement[47]. Regardless of the administrative process available to them, prisoners must first exhaust those remedies in full before filing a case. Following cases further detailed this requirement, removing any requirement that Federal courts analyze the adequacy of the administrative remedies at all[48]. This reduction

[45] Novikov, Eugene. "Stacking the Deck: Futility and the Exhaustion Provision of the Prison Litigation Reform Act." University of Pennsylvania Law Review, vol. 156, no. 3, 2008, pp. 817
[46]Eugene 819
[47] Eugene 823
[48] Eugene 825

of judicial intervention and discretion gives way to an increase in prison-created barriers that require navigation, regardless of the case's circumstances.

The discretion of prisons continued to increase over time. In the case of *Pozo v. McCaughtry*, the court determined that a prisoner has not exhausted all of her administrative remedies if she has not complied with the procedural rules established by the prison[49]. This stipulation is detrimental to individuals with a need to seek redress. It is important to keep the overarching goal of the PLRA in mind when analyzing seemingly innocent stipulations like the one previously stated. This requirement allows for prisons to significantly increase the opportunities for the dismissal of cases due to procedural mistakes. The author here emphasizes the point made within the Legislative history section of this research: Congressional intent provides some insight, but can differ greatly from the actual consequences following a statute's enactment. Although judicial discretion has become limited in the arena of administrative exhaustion, it is unlikely that Congress intended complete limitation upon the judiciary.

Imprisoning Rights: The Failure of Negotiated Governance in the Prison Inmate Grievance Process

Written by Van Swearingen, this article approaches issues created by the PLRA in a way that simplifies the lofty political issues. The basis of the article and the groundwork for many of the arguments is the concept of internal grievance. As stated previously, inmates are required to fully comply with prison administrative procedures, and exhaust them in full before ever reaching the Federal judiciary. This creates a straightforward problem: internal grievance

[49] Eugene 830

disputes are kept within prison walls, and almost never reach the public sphere[50]. This isolation of grievances and disputes creates far too much space for prison discretion. This leads to a host of problems, because the prison has ample opportunity to self-correct before a court intervenes[51].

The author does not suggest that internal grievance procedures are inherently harmful, and instead assert that they can be an extremely effective tool for inmate autonomy. The issue is, however, that inmates were not kept in mind during the development and utilization of administrative remedies as a form of relief prior to the Federal judiciary. The author also argues that the broad expansion of administrative power has put some of the judiciary's responsibilities into the hands of individual prisons[52]. The missing component seems to be the prisoners themselves. Swearingen does however shed positive light on reform minded administrators, and their efforts in reducing the broad discretion held by prison guards and officials.

[50] Swearingen, Van. "Imprisoning Rights: The Failure of Negotiated Governance in the Prison Inmate Grievance Process." California Law Review, vol. 96, no. 5, 2008, pp. 1354
[51] Swearingen 1354
[52] Swearingen 1362

Analysis

Based on the results of the Legislative history research of the PLRA in comparison to the many outcomes and consequences, it is clear that the Prison Litigation Reform Act has failed to effectively improve the meritorious nature of the claims being filed within prisons. Over a fourteen year span, Congress highlighted key issues that needed to be addressed: the volume of cases, and frivolous claims. One goal was certainly achieved; the number of cases did decrease after the PLRA's enactment. The quality of those in comparison to before however, is inconclusive.

Comparing the words of Congressional Committees regarding the exhaustion method and filing fees to the critiques of scholars years later reveals the disconnect between the Legislature and the people they impact. It is clear that the intent was to improve the quality of cases that reached the Federal Judiciary and create a more robust administrative grievance system. In practice however, these administrative remedies gave prisons far too much discretion, leaving the prisoners with claims unsolvable by the administration with no remedy for an extended period.

Although the Congressional attitude was strict on crime immediately preceding the enactment of the PLRA, there is no evidence that the intent was to challenge the established Constitutional rights of prisoners. The lack of consideration for prisoners during the bill proposal implicated these rights regardless.

Potential changes

Based upon the firsthand analysis of the legislative history research alongside the literature review, it is clear that the PLRA lacks the ability to achieve the goals it was intended to achieve. Although there is clear motives for completely repealing the law in entirety, some changes could be made to reduce the burden on prisoners. The first of these changes would be to

either remove the exhaustion requirement or create a uniform administrative process that would be required by all prisons. If each prisoner were required to navigate a uniform grievance procedure regardless of the state they were in, the dilemma regarding prison discretion would be removed. Additionally, a judge should be granted the power to waive the exhaustion requirement if it is determined that no administrative remedy could alleviate the claim being brought. This power once held by judges allowed for reasonable discretion of the court. If the type of remedy sought would never be granted through an administrative remedy, it is inconsistent with the notions of justice to require them.

The second change that would reduce the burden on prisoners would be to allow for affidavits of poverty for all indigent litigants once again. It is completely unacceptable for impoverished individuals seeking redress to be classified differently based on prison status. As stated previously, the classification between indigent litigants creates a potential due process violation that could be analyzed under intermediate scrutiny or an undue burden analysis. Allowing prisoners to waive filing fees due to poverty would relieve this possible violation and keep the focus on the nature of the claim, not the financial means of the litigant. These changes may allow for the reduced number of claims brought by a packed prison system, but in a way that allows for flexibility and reasonableness.

Conclusion

Legislation regarding prison reform and prison litigation is complex, multi-faceted, and has extremely important implications on countless people. When analyzing the Prison Litigation Reform Act of 1995, there is no one picture that can be painted. This research highlights the inherently ambiguous nature of statutory interpretation, and the disconnect between Congressional intent and results post enactment. One key issue however does emerge: the lack of involvement of those who are impacted by proposed legislation. Prison reform is always changing, and attitudes are shifting constantly, but it is important to keep in mind that prisoners are people, who are entitled certain rights and liberties, just as everyone outside prison walls do. Theories of crime and punishment, and academic discussions often are approached in a sterile, non-human focused manner. This research serves to highlight the stark differences between intent and result, and the importance of keeping people in the mind of legislatures.

Bibliography

Data Update. Incarceration and the Law. (n.d.). https://incarcerationlaw.com/resources/data-update/#TableA

"Guides: Legislative History Research Guide: Getting Started & Key Resources." Getting Started & Key Resources - Legislative History Research Guide - Guides at Georgetown Law Library, guides.ll.georgetown.edu/legislative_history. Accessed 13 May 2023.

Libguides: Federal Legislative History: Basics. Basics - Federal Legislative History - LibGuides at American University Washington College of Law. (n.d.). https://wcl.american.libguides.com/c.php?g=563252&p=3877952

"Litigation." *Legal Information Institute*, www.law.cornell.edu/wex/litigation.

"Steps in the Federal Criminal Process." *U.S. Attorneys | Steps in the Federal Criminal Process | United States Department of Justice*, 6 Jan. 2023, www.justice.gov/usao/justice-101/steps-federal-criminal-process.

"U.S. Commission on Civil Rights." *Getting Uncle Sam to Enforce Your Civil Rights*, www.usccr.gov/files/pubs/uncsam/complain/lawenf.htm.

"Complaint for Violation of Civil Rights (Prisoner)." *United States Courts*, www.uscourts.gov/forms/pro-se-forms/complaint-violation-civil-rights-prisoner.

42 U.S.C §1997e

125 Cong.Rec. * (bound ed. May 23, 1979) Debated, Amended, Passed House), available at ProQuest Legislative Insight.

Civil Rights for Institutionalized Persons, Hearing Before the Subcom on Courts, Civil Liberties, and Administration of Justice, Committee on Judiciary. House, 95th Cong. (1977), available at ProQuest Legislative Insight.

141 Cong.Rec. * (daily ed. Feb. 9, 1995) House consideration of H.R. 667), available at ProQuest Legislative Insight.

Margo Schlanger. Margo Schlanger | University of Michigan Law School. (n.d.). https://www.law.umich.edu/facultyhome/margoschlanger/Pages/default.aspx

Prison Reform: Enhancing the Effectiveness of Incarceration, Hearing Before the

Committee on the Judiciary. Senate, 104th Cong. (1995), available at ProQuest Legislative Insight.

Riewe, Julie M. “The Least among Us: Unconstitutional Changes in Prisoner Litigation under the Prison Litigation Reform Act of 1995.” *Duke Law Journal*, vol. 47, no. 1, 1997, Pp.117.

Novikov, Eugene. “Stacking the Deck: Futility and the Exhaustion Provision of the Prison Litigation Reform Act.” University of Pennsylvania Law Review, vol. 156, no. 3, 2008, pp. 817

Swearingen, Van. “Imprisoning Rights: The Failure of Negotiated Governance in the Prison Inmate Grievance Process.” California Law Review, vol. 96, no. 5, 2008, pp. 1354