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Prison Litigation Reform Act: Survey of Post-Reform Act Prisoners' Civil Rights Cases

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Summary

The Prison Litigation Reform Act ("PLRA"), P.L. 104-134, effective April 26, 1996, made major changes in the procedures that apply to federal civil rights cases filed by prisoners in federal or state custody. The Act also sought to limit the authority of federal courts to grant prospective relief in excess of the least intrusive means available to remedy violations of prisoners' federal rights.

This report summarizes the Prison Litigation Reform Act and surveys post-Reform Act court decisions interpreting the Act and other cases concerning prisoners' civil rights.

Before enactment of the PLRA, prisoner civil rights litigation constituted the largest category of federal civil rights cases, 17% of district court civil cases, and 22% of federal civil appeals. Prisoners were able to file as "paupers," seldom paid filing fees, and benefitted from pleading standards that made it difficult to dismiss cases. Alleged violations most commonly involve the "cruel and unusual punishments" clause of the Eighth Amendment, the free exercise of religion clause or free speech clause of the First Amendment, and the due process clause of the Fourteenth Amendment.

The Prison Litigation Reform Act generally requires payment of filing fees and exhaustion of administrative remedies; curtails the authority of federal courts to order prospective relief, including early release of prisoners to remedy prison overcrowding; bars federal court-ordered prison construction and orders to raise taxes as remedies; places limits on repeat frivolous filers; requires judicial screening and early dismissal of nonmeritorious claims; and requires that prisoners who win monetary damage awards must use the money to pay their outstanding restitution orders to compensate crime victims.

The appellate courts have generally upheld the constitutionality of the key provisions of the Reform Act, including the "immediate termination" of consent decrees, the mandatory filing fees, and the dismissal of an *in forma pauperis* petition if three earlier petitions by the prisoner were dismissed on grounds the cases were frivolous, malicious, or failed to state a claim for relief. The appellate courts have split over application of the PLRA's attorney's fee limits to services completed before passage of the Act.

In a non-PLRA case, the Supreme Court held in *Lewis v. Casey* that there is no abstract right of prisoners for access to certain legal materials or legal assistance. The prisoner must prove an "actual injury" concerning denial of access to the courts, which cannot be proved merely by showing deficiencies in the prison law library. The lower federal courts are split on whether or not the Americans with Disabilities Act applies to state prisoners.

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Prison Litigation Reform Act: Survey of Post-Reform Act Prisoners' Civil Rights Cases

The Prison Litigation Reform Act ("PLRA") was enacted effective April 26, 1996 as Title VIII of the fiscal 1996 appropriations act for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies.¹ This Act made major procedural changes in the federal civil rights of prisoners in federal or state custody. The Reform Act also sought to curtail the authority of federal courts to remedy prison conditions, including prison overcrowding, that allegedly violate prisoners' federal rights.

In extensive post-Reform Act litigation, prisoners and their advocates have challenged the constitutionality and statutory applications of many Reform Act provisions. Many of the cases focus on issues of retroactive application: to what extent do PLRA requirements such as exhaustion of administrative remedies, dismissal of "frivolous filers" after "three-strikes," the attorney's fee limits, and the nearly-mandatory filing fees, apply to cases already filed and pending before a district judge or on appeal. Another group of cases involves the constitutionality of the limits on the authority of the federal courts to remedy prison conditions, especially in the case of existing consent decrees.²

¹ Pub. L. 104-134, Act of April 26, 1996. The Prison Litigation Reform Act ("PLRA") amended 18 U.S.C. §3626 ("appropriate remedies with respect to prison conditions"); 18 U.S.C. §3624(b) (technical changes); 42 U.S.C. §1997 ("Civil Rights of Institutionalized Persons"); 28 U.S.C. §1915 ("in forma pauperis filings"); 28 U.S.C. §1346(b) ("federal tort claims"); and 11 U.S.C. §523(a) ("exception to discharge of debt in bankruptcy proceeding"). The PLRA also added two new sections — §1915A ("Screening") and §1932 ("Revocation of earned release credit") — to title 28, and new free-standing provisions regarding satisfaction of victim restitution orders and notice to crime victims of pending damage awards to prisoners. By reference, the Act altered the rights of prisoners pursuant to 42 U.S.C. §§1983 and 1988. Finally, as a technical adjustment, the PLRA repealed subsections (b) and (d) of section 20409 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322 (Act of September 13, 1994).

² In mid-1995, about one-fourth of the state correctional facilities was under a court order or consent decree to limit prison population or address issues of conditions of confinement. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, "Census of State and Federal Correctional Facilities, 1995" (August 7, 1997).

This report summarizes the Prison Litigation Reform Act, and surveys post-Reform Act court decisions interpreting the Act and other recent cases in the field of prisoner civil rights litigation.³

Background

Prisoner civil rights litigation in the United States had its primary genesis in Supreme Court decisions in the 1960s. These decisions changed legal doctrine that had formerly barred most prisoner civil rights suits.

Prisoners file civil rights actions primarily to challenge their conditions of confinement in prisons or jails.⁴ Federal district courts have jurisdiction over cases by state prisoners under the 1871 Civil Rights Act, 42 U.S.C. §1983.⁵ Section 1983 is now interpreted as creating a private cause of action against any person who, under color of state law, deprives another citizen or person within the jurisdiction of the United States of "any rights, privileges, or immunities secured by the Constitution and laws" of the United States. In 1971, the Supreme Court created an analogous remedy for constitutional wrongs by federal officials in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*.⁶

Alleged violations of prisoners' civil rights most commonly involve the "cruel and unusual punishments" clause of the Eighth Amendment, the free exercise of religion clause of the First Amendment, and the due process clause of the Fourteenth Amendment.

For the past 20 years, Supreme Court decisions have gradually curtailed the substantive rights of prisoners, compared to the earlier cases of the 1960s through the mid-1970s, approximately. Even before passage of the Reform Act, the Court held that prison officials are not liable unless they act with subjective "deliberate indifference" to violate a prisoner's federal rights.⁷ With respect to imposition of prison discipline, due process standards apply only in cases of serious misconduct

³ For a review and analysis of pre-1996 prisoner civil rights litigation, see D. Schrader, Prisoner Civil Rights Litigation and the 1996 Reform Act, CRS Report No. 96-468A.

⁴ This report focuses on litigation by those confined in prisons rather than jails. Jails are both pretrial detention facilities and places of punishment for short periods — usually one year or less — for lesser offenses. Many of the prison conditions of confinement cases apply in the jail context. Pretrial detainees, however, retain more constitutional rights than convicted felons. See *Bell v. Wolfish*, 441 U.S. 520, 539 (1979) (punishment "may not constitutionally be inflicted upon detainees qua detainees").

⁵ Act of April 20, 1871, ch. 22, 17 Stat. 13. Section 1983 was amended slightly in 1979 to include the District of Columbia within its purview. Pub. L. 96-170, 93 Stat. 1284, Act of December 29, 1979.

⁶ 403 U.S. 388 (1971).

⁷ *Farmer v. Brennan*, 114 S. Ct. 1970 (1994).

involving issues of real substance.⁸ To show a violation of a federal right in prison discipline cases, *Sandin v. Conner*⁹ holds that the prisoner must have suffered a hardship that is atypical of ordinary prison life and significant in nature.

Notwithstanding this curtailment of substantive rights by recent Supreme Court decisions, prisoner civil rights litigation continued to increase. At the time the Prison Litigation Reform Act was passed, prisoner civil rights suits were the largest category of federal civil rights cases, constituting 17% of all district court civil cases and 22% of all federal civil appeals. Most prisoners filed as "paupers," seldom paid filing fees, and benefitted from pleading standards that made it difficult to dismiss cases.

Summary of Prison Litigation Reform Act

The Prison Litigation Reform Act ("PLRA"), Public Law 104-134,¹⁰ revised the criminal code regarding the appropriate remedies for prison conditions in violation of the Constitution or federal law, including prison overcrowding.¹¹ These amendments are intended to limit the authority of the federal courts to fashion remedies to correct violations of federal rights.

The Act also amended the Civil Rights of Institutionalized Persons Act (42 U.S.C. §1997) to make major changes in the procedural and substantive rights of federal and state prisoners and in their ability to sue for alleged violations of federal civil rights.

In summary, the Reform Act generally requires payment of filing fees and exhaustion of administrative remedies; curtails the authority of federal courts to order prospective relief, including early releases of prisoners to remedy prison overcrowding; bars federal court-ordered prison construction and orders

⁸ *Wolff v. McDonnell*, 418 U.S. 539 (1974).

⁹ 115 S. Ct. 2293, 2301 (1995) ("Discipline by prison officials in a wide range of misconduct falls within the expected parameters of the sentence imposed by a court of law").

¹⁰ The Reform Act was passed as Title VIII of H.R. 3019, the fiscal 1996 appropriation for the Departments of Commerce, Justice, and State, and the Judiciary and related agencies. Act of April 26, 1996. The Senate version of the Reform Act was S. 1279. Although enacted as part of an appropriations measure, the Prison Litigation Reform Act amended the positive law.

¹¹ Amendment of 18 U.S.C. §3626. As enacted in the Violent Crime Control and Law Enforcement Act of 1994, section 3626 placed some limits on the authority of federal courts to order remedies for prison overcrowding. The PLRA now places limits on the authority of federal courts not only with respect to prison overcrowding but also prison conditions in general.

to raise taxes as remedies; places limits on repeat frivolous filers; and requires that prisoners who win monetary damage awards must use the money to pay their outstanding restitution orders to compensate crime victims.¹²

Limits on Prison Condition Remedies.

The Reform Act prohibits 1) prospective relief¹³ regarding prison conditions from extending further than necessary to correct violation of federal rights of particular plaintiffs; 2) the court from granting any relief other than the least intrusive means necessary to correct the violation.¹⁴ The court is also directed to give substantial weight to any adverse impact on public safety or operation of the criminal justice system caused by the relief, and to respect principles of comity set out in the Reform Act. Termination of prospective relief is authorized upon motion of any party or intervenor within 2 years after its entry, or, in the case of pre-Reform Act orders, within 2 years after April 26, 1996.¹⁵

Bar on court-ordered prison construction. Federal courts are prohibited from ordering the construction of prisons or the raising of taxes as remedies for prison conditions in violation of federal rights.¹⁶

Preliminary relief. If the court orders preliminary injunctive relief, the injunction shall automatically expire 90 days after its entry, unless the court makes the statutory findings required to justify prospective relief and makes the order final before expiration of the 90-day period. The preliminary injunctive relief must also be narrowly drawn, extend no further than necessary to correct a violation, and be the least intrusive means necessary to correct the violation. In addition to giving substantial weight to any adverse impact on public safety in ordering preliminary relief, the court must respect principles of comity set out in the Reform Act.¹⁷

Comity. The statutory principles of comity require that the court not order any prospective relief that requires or permits a state or local government official to exceed his or her authority or otherwise violate state or local law unless the relief is

¹² This summary characterizes the apparent intent of the Congress in enacting the PLRA. The next section of the Report will examine the judicial interpretation of the Act to date.

¹³ "Prospective relief" means all relief other than compensatory monetary damages.

¹⁴ 18 U.S.C. §3626, as amended by Pub. L. 104-134.

¹⁵ 18 U.S.C. §3626(b).

¹⁶ 18 U.S.C. §3626(a)(1)(C). The term "prison" is defined to mean any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law.

¹⁷ 18 U.S.C. §3626(a)(2).

necessary to correct the violation of a federal right and no other relief will correct the violation.¹⁸

Prisoner release orders. Only a three-judge court pursuant to 28 U.S.C. §2284 can enter a prisoner release order as relief for prison conditions violations of federal rights. To enter such an order, the three-judge court must find by clear and convincing evidence that overcrowding is the primary cause of the violation of a federal right and that no other relief will remedy the violation.¹⁹ As pre-conditions to convening a three-judge court, the district court must have issued a less intrusive prior order which failed to remedy the violation, and the defendants must have had a reasonable amount of time to comply with the previous court order.²⁰

Any state or local official or unit of government whose jurisdiction or function includes responsibility for the jail, prison, or correctional facility affected by a possible prisoner release order has standing to oppose imposition of the order or its continuation.²¹

Special masters. If special masters are appointed, they must be paid from funds appropriated to the Judiciary.²²

Settlements. The courts are prohibited from entering or approving a consent decree unless it complies with the limitations on relief set by 18 U.S.C. §3626(a). Private settlement agreements must also comply with the same limitations on relief if the terms of the agreement are subject to court enforcement.²³

All prospective relief affected. The amended section 3626 of title 18 U.S.C. applies to all orders for prospective relief in prison condition cases, including pre-Reform Act orders.²⁴

Federal Intervention.

The Attorney General must personally sign any complaint by the federal government to initiate a civil action, or any motion by the federal government to intervene in civil rights litigation, under the Civil Rights of Institutionalized Persons Act.²⁵ The Attorney General must also personally sign any certification of

¹⁸ 18 U.S.C. §3626(a)(1)(B).

¹⁹ 18 U.S.C. §3626(a)(3).

²⁰ 18 U.S.C. §3626(a)(3)(A).

²¹ 18 U.S.C. §3626(a)(3)(F).

²² 18 U.S.C. §3626(f)(4).

²³ 18 U.S.C. §3626(c).

²⁴ SEC. 802(b) of Pub. L. 104-134. The application of amended 18 U.S.C. §3626 to court orders and consent decrees that pre-date the PLRA is one of the highly litigated issues surveyed in the next section of this Report.

²⁵ Amendments of 42 U.S.C. §§1997a and 1997c.

compliance with federal regulations or standards by state governments regarding conditions of confinement in state institutions.²⁶

Exhaustion of Administrative Remedies.

The Prison Litigation Reform Act mandates exhaustion of federal and state administrative remedies before filing any §1983 action or other federal action with respect to prison conditions.²⁷ Exhaustion is required for persons confined in any jail, prison, or other correctional facility.

Before passage of the PLRA, the courts had discretion to require exhaustion, but they did not require exhaustion where monetary relief was sought and the state did not provide damages as an administrative remedy. Since most §1983 petitioners seek monetary relief, exhaustion was generally not required.

The PLRA also provides that the failure of a state to adopt or adhere to an administrative grievance procedure for prisoners shall not constitute a basis for action under section 3 or 5 of the Civil Rights of Institutionalized Persons Act.

Judicial Screening.

The Reform Act directs the courts to screen and dismiss actions, as soon as possible either before or after docketing, that are frivolous or malicious, fail to state a claim upon which relief could be granted, or seek monetary relief from defendants who are immune from such relief (e.g., state governments that have not waived sovereign immunity).²⁸

The same standards are set out in a new dismissal provision in §1997e of the Civil Rights of Institutionalized Persons Act. Prisoner claims must be dismissed on the court's own motion or on the motion of a party if the claims are frivolous, malicious, fail to state a claim upon which relief can be granted, or seek monetary relief from a defendant who is immune to such relief.

Physical Injury Requirement.

No prisoner confined in a jail, prison, or other correctional facility may bring a federal civil rights action for mental or emotional injury suffered while in custody without a prior showing of a physical injury.²⁹

For purposes of filing a federal civil rights action, the Reform Act defines "prisoner" to mean "any person incarcerated or detained" in any facility who is

²⁶ Amendment of 42 U.S.C. §1997b.

²⁷ Amendment of 42 U.S.C. §1997e.

²⁸ New §1915A added to title 28 U.S.C.

²⁹ SEC. 7(e) of 42 U.S.C. §1997e as amended by Pub. L. 104-134. The Reform Act erects the same bar on mental or emotional injury tort claims by convicted felons. 28 U.S.C. §1346(b)(2).

"accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program."³⁰ The limitations on prisoner civil rights actions legislated by the Reform Act therefore apply to persons detained in jail awaiting trial, to juvenile detainees or offenders, and, of course, to adult offenders confined in a jail, prison, or other correctional facility.

Conduct of Hearings.

To the extent practicable, where a prisoner's participation is required in pretrial proceedings, the proceedings shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from his or her place of confinement. Subject to the agreement of the federal or state custodial officials, hearings may be conducted at the place of confinement.³¹

Attorney's Fees.

The PLRA sets limits on an award of attorney's fees in prisoner civil rights actions. Attorney fee awards pursuant to 42 U.S.C. §1988 are prohibited except to the extent the fee was directly and reasonably incurred in proving an actual violation of a prisoner's rights protected by statute and then only if one of two other conditions is met: i) the amount of the fee is proportionately related to the court ordered relief, or ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.³²

The first condition addresses cases where a jury has awarded a prisoner nominal damages (e.g., ten cents), but the court allows significant attorney's fees (e.g., \$28,000).³³ The second condition relates to cases where attorneys are involved in enforcing nonmonetary relief.

The PLRA also requires the prisoner to pay up to 25% of any monetary damages to satisfy the fees of his/her attorney. Also, the hourly rate shall not be greater than 150% of the rate established by 18 U.S.C. §3006A for court-appointed counsel.

³⁰ SEC. 7(h) of 42 U.S.C. §1997e as amended by Pub. L. 104-134.

³¹ SEC. 7(h) of 42 U.S.C. §1997e.

³² SEC. 7(d) of 42 U.S.C. §1997e as amended by Pub. L. 104-134.

³³ These were the facts in *Lucas v. Guyton*, 901 F. Supp. 1047 (D. So. Car. 1995). A jury found for a death-row inmate on one claim and awarded 10 cents in damages. The evidence demonstrated that the inmate had a history of self inflicted injuries and a habit of fighting with guards. The day of the incident, the inmate was admittedly drunk, swung the first punch, possibly spat at the guard, and violently resisted transfer to an isolation cell. The district court thought it significant that the jury awarded even 10 cents in damages. (Apparently the court did not consider the possibility that the award was actually in effect an insulting award for wasting the jury's time.) The court awarded attorney's fees of \$28,700 because counsel had been instrumental in vindicating a constitutional right. (The jury knew of course that the prisoner was on death-row but did not know the facts of the crime. Lucas had murdered two elderly people in their home.)

In Forma Pauperis Filings.

Filing fees. A prisoner seeking to file *in forma pauperis* must submit a certified copy of his prison trust fund for the most recent six-months and pay the full amount of a filing fee, if any funds are available. The court must set a schedule for collecting the fees from the individual trust fund.³⁴ If no funds are available to pay the filing fee, the prisoner may file the civil rights action without paying a fee.

False allegations of poverty. If the court finds that the allegation of poverty is untrue, it shall dismiss the case at any time. For a third time, the Reform Act also specifies dismissal of the case if the court determines the action or appeal is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.

Repeat frivolous filings. A prisoner is prohibited from filing *in forma pauperis* if three or more earlier actions or appeals have been dismissed on the grounds the case was frivolous, malicious, or failed to state a claim upon which relief could be granted, unless the prisoner is under imminent danger of serious physical injury.³⁵

Satisfaction of Restitution Orders.

Any compensatory damages award to a prisoner for a civil rights violation must be paid directly to satisfy any outstanding restitution orders pending against the prisoner.³⁶ The prisoner receives any amount that remains after full payment of the restitution order.

The Reform Act also requires, that prior to payment of an award to a prisoner, reasonable efforts shall be made to notify the prisoner's crime victims concerning the pending award.³⁷ The intent is to ensure that victims are compensated before the perpetrator of the crime receives a civil rights money damages award.

Revocation of Good Time Credits for Malicious Suits.

Another disincentive to filing malicious or harassing suits applies only to prisoners in federal custody. The court on its own motion or on the motion of any party may order revocation of any earned good time credit under 18 U.S.C. §3624(b) that has not yet vested if the court finds the claim was filed for a malicious purpose

³⁴ Amendment of 28 U.S.C. §1915.

³⁵ New 28 U.S.C. §1915(g), as added by Pub. L. 104-134. The statutory limits on repeat frivolous filers and the requirement that prisoners seeking to file *in forma pauperis* must pay fees if they have money in their prison trust fund accounts are among the key provisions of the PLRA, from the perspective of the supporters of the Act. It is not surprising that these provisions are also the focal point of a large number of the post-Reform Act cases.

³⁶ SEC. 807 of Pub. L. 104-134.

³⁷ SEC. 808 of Pub. L. 104-134.

or solely to harass the defendant, or the prisoner testifies falsely or knowingly presents false evidence.³⁸

A related amendment provides that good time credit awarded under 18 U.S.C. §3624 after enactment of the Prison Litigation Reform Act (i.e., after April 26, 1996) shall vest on the date the prisoner is released from custody.

Waiver of Reply by Defendant: Pleading Standards.

Any defendant in a prisoner civil rights case under 42 U.S.C. §1983 or any other federal law may waive the right to reply. This waiver shall not constitute an admission of the allegations in the complaint.³⁹

No relief shall be granted to the prisoner unless a reply is filed.⁴⁰ The court may require any defendant to reply if it finds that the plaintiff has a reasonable opportunity to prevail on the merits.⁴¹

If defendants exercise their initial right not to reply in prisoner civil rights cases, these waiver provisions coupled with the requirement for judicial screening to identify frivolous or malicious petitions, or petitions that fail to state a claim, could lead to early dismissals of a substantial number of prisoner petitions. Under pre-Reform Act law, the Supreme Court had held that a prisoner *in forma pauperis* petition could not be dismissed for failure to state a claim unless it appears "beyond doubt" that the plaintiff can prove no set of facts to support the claim. *Haines v. Kerner*, 404 U.S. 519 (1972). The PLRA appears to change this pleading standard by requiring the court to find that the plaintiff has a reasonable opportunity to prevail on the merits before the court can order the defendant to reply. Arguably, the waiver provisions modify the *Haines* pleading standard.

Survey of Cases Decided Under the PLRA

Limits on General Relief for Prison Conditions: "Immediate Termination" of Consent Decrees.

The appellate courts have upheld the constitutionality of the provisions of the PLRA [18 U.S.C. §3626(b)] that seek to limit general court-ordered relief in prison conditions of confinement cases. The 4th and 8th Circuit Courts of Appeal have upheld the provisions as constitutional, and either ordered termination or remanded the case for the district court to order termination. The 2d Circuit purported to hold the provisions constitutional, but only through an interpretation that essentially requires the state courts to substitute for the federal courts in enforcing the provisions of the consent decree that exceed federal constitutional rights. It ordered a new

³⁸ New 28 U.S.C. §1932.

³⁹ SEC. 7(g)(1) of 42 U.S.C. §1997e.

⁴⁰ *Ibid.*

⁴¹ SEC. 7(g)(2) of 42 U.S.C. §1997e.

hearing rather than termination because the pretrial detainees were entitled to a hearing on alleged new violations of federal rights. Several district court decisions had held these provisions unconstitutional -- generally on separation-of-powers principles, but all of these adverse decisions have been reversed on appeal except for one decision in the Eastern District of Michigan.

The 4th Circuit in *Plyler v. Moore*,⁴² ordered termination of a consent decree affecting the South Carolina prison system,⁴³ which had been in effect since 1986, holding that the PLRA constitutionally deprives the federal courts of authority to approve relief greater than that required by federal law. The court rejected arguments that the "immediate termination" provisions violate the separation of powers principle, and the equal protection and due process clauses of the Fifth Amendment. The provisions are not applied "retroactively" under the doctrine of *Landgraf v. USI Film Products*⁴⁴ since the statute affects the propriety of prospective relief.

In *Gavin v. Branstad*,⁴⁵ the 8th Circuit rejected arguments that the "immediate termination" of existing consent decrees violates the separation-of-powers principle, impermissibly interferes in pending cases, or denies prisoners equal protection under the law. The appellate court reversed the district court, which had held the provisions unconstitutional. Since the PLRA does not burden prisoners' fundamental right of access to the courts, its constitutionality can be analyzed under a rational basis standard rather than under strict scrutiny. The PLRA passes this test since the government has a rational interest in promoting judicial economy and reducing the involvement of the courts in state prison management.

It is well-established that Congress has the authority to control the remedial powers of Article III courts. Also, since a consent decree is an executory form of relief that remains subject to later developments, the Constitution does not bar the Congress from limiting the remedies available under existing consent decrees.

With respect to equal protection arguments, nothing in 18 U.S.C. §3626 divests prisoners of a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts. The "immediate termination" provisions implicate neither a fundamental right nor a suspect classification. The equal protection claim fails because there the PLRA is based on legitimate governmental interests -- the promotion of principles of federalism, security of prisons, and fiscal restraint. The limitation of relief to that which is essential to enforce prisoners' rights under the Constitution is an eminently rational means of furthering these governmental interests.

⁴² 100 F.3d 365 (4th Cir. 1996).

⁴³ The 1986 consent decree was primarily concerned with measures to alleviate prison overcrowding, but also contained detailed provisions relating to health services, educational programs, vocational training, food service, and visitation.

⁴⁴ 511 U.S. 244 (1994).

⁴⁵ 122 F. 3d 1081 (8th Cir. 1997).

The 8th Circuit reversed and remanded the case to the district court (presumably to order termination, consistent with its opinion). The district court had ruled the PLRA unconstitutional and therefore had not ordered termination of the consent decree.⁴⁶

The Second Circuit upheld the "immediate termination" provisions by interpreting the PLRA as a limitation only on the federal court's power to enforce non-federal aspects of consent decrees and by interpreting the term "relief" as not including the consent decrees themselves, in *Benjamin v. Jacobson*.⁴⁷ The consent decrees remain binding on the parties and the 2d Circuit apparently assumes that the state courts will grant specific performance of the consent decrees under contract law. The court intimated that if state courts do not enforce the contractual rights in the consent decrees, the federal courts might still have jurisdiction to remedy an unconstitutional impairment of contractual rights.

Moreover, the inmates in this case are entitled to an evidentiary hearing on their allegations of current and ongoing violations of federal rights. The court therefore lifted the stay on enforcement of the consent decree, and kept the federal courts in the business of enforcing this consent decree. The case was begun in 1975 by pretrial detainees in New York City jails.

Similar to *Benjamin v. Jacobson*, a Massachusetts district court in *Inmates of the Suffolk County Jail v. Sheriff of Suffolk County*⁴⁸ purported to uphold the PLRA's termination provisions but did so by interpreting the term "relief" as not including consent decrees. The court opined in dicta that, if the PLRA were interpreted as wiping out the obligations under the consent decree, the provisions would be unconstitutional as a violation of the separation-of-powers principle.

Like the decree in *Jacobson*, the Suffolk County jail case involved a consent decree (dating from 1971) concerning conditions of confinement for pretrial detainees. The fact that the Supreme Court has ruled that pretrial detainees have broader constitutional rights than prisoners⁴⁹ may have made the Second Circuit and the Massachusetts district court more reluctant to disturb these existing consent decrees. From the viewpoint of prisoner litigation reform advocates, however, the statutory interpretation that the PLRA's limits on "prospective relief" do not include consent decrees appears almost as negative as a decision holding the "immediate termination" provisions unconstitutional.

Before the *Benjamin v. Jacobson* decision, a district court in the Southern District of New York had granted the motion of state officials to terminate a consent decree covering treatment of prisoners in the New York correctional system who

⁴⁶ The decree in *Gavin v. Branstad* covers the Iowa prison system and dates from 1984.

⁴⁷ 124 F. 3d 162 (2d Cir. 1997).

⁴⁸ 952 F. Supp. 869 (D. Mass. 1997).

⁴⁹ *Bell v. Wolfish*, 441 U.S. 520 (1979) (punishment may not constitutionally be inflicted upon pretrial detainees simply because they are confined in jails, awaiting trial).

refuse to take the test for latent tuberculosis. The court in *Giles v. Coughlin*⁵⁰ approved a form of confinement in which such prisoners are generally confined to their cells but may receive legal visitors, have library privileges, get one-hour of exercise daily outside of their cells, and are released into the general prison population after one year if they show no signs of active tuberculosis. After approving this "tuberculin hold" form of confinement, the court terminated the prospective relief ordered in the consent decree.

A district court judge terminated a 1982 consent decree requiring the corrections officials of the Indiana State Prison system to recognize the American Muslim Mission as a legitimate religious group in *James v. Lash*.⁵¹ The judge rejected arguments that the PLRA violates separation of powers doctrine. Applying a rational basis test, the court also rejected an equal protection challenge on the ground that §3626 addresses legitimate governmental interests (such as federalism and judicial economy) in a rational way.

The PLRA's "immediate termination" provisions have been held unconstitutional by a district court for the Eastern District of Michigan in *Hadix v. Johnson*.⁵² on the ground that they violate the separation of powers principle.

In Forma Pauperis Filings.

The largest category of post-Reform Act cases involves issues relating to the *in forma pauperis* ("IFP") provisions of the Act, including the constitutionality of the filing fee provisions of 28 U.S.C. §1915(b), retroactive application of §1915(b), and the constitutionality and interpretation of the "three-strikes" limits on repeat "frivolous filers."⁵³

Constitutionality of mandatory filing fees.⁵⁴ The filing fee requirements of §1915(b) have been held constitutional by every appellate court to consider the issue, including the 2d, 4th, 6th, and 11th circuit courts of appeal. In *Nicholas v. Tucker*,⁵⁵ the 2d Circuit rejected constitutional challenges based on the equal protection clause of the Fifth Amendment and on the First Amendment. Since the provisions do not

⁵⁰ 1997 WL 433437 (S.D.N.Y., August 1, 1997).

⁵¹ 965 F. Supp. 1190 (N.D. Ind. 1997).

⁵² 947 F. Supp. 1100 (D. E. Mich. 1996).

⁵³ The prisoner is prohibited from filing in forma pauperis if three or more earlier actions or appeals have been dismissed because the case was frivolous, malicious, or the complaint failed to state a claim upon which relief could be granted. The only exception is for a prisoner who is under imminent danger of serious physical injury.

⁵⁴ The filing fees for prisoner civil rights complaints must be paid if any funds are available in the individual prison trust fund account of the complainant. If no funds are available in the account and the prisoner alleges poverty, the prisoner may file the civil rights action without paying filing fees.

⁵⁵ 114 F. 3d 317 (2d Cir. 1997).

deny access to the courts, they can be analyzed under a rational basis scrutiny.⁵⁶ The goal of relieving the federal courts of excessive prisoner civil rights filings is a legitimate governmental purpose.⁵⁷ Payment of filing fees, as required of other civil litigants, is a rational means to accomplish this goal; prisoners must decide whether filing a lawsuit is worth the cost. The First Amendment claims were held subsumed by the access to court claim.

The 4th Circuit rejected similar constitutional arguments in *Roller v. Gunn*.⁵⁸ The right of court access is subject to the power of Congress to limit the jurisdiction of Article III courts. The filing fee provisions are too mild to amount to a "burden" on court access. The court ruled that prisoners are not a suspect class, and that the filing fee provisions do not burden any fundamental rights. Therefore, it applied the rational basis test and found the provisions constitutional.

The 6th Circuit in *Hampton v. Hobbs*⁵⁹ and the 11th Circuit in *Mitchell v. Farcass*⁶⁰ made similar rulings upholding the constitutionality of the PLRA's filing fee provisions.

In a nonconstitutional law case involving the filing fee provisions, the 6th Circuit held that, in class actions, the responsibility for paying the required fees rests with the prisoner or prisoners signing the complaint or notice of appeal, and not with the entire class.⁶¹

The Third and Fifth Circuits have held that the PLRA's filing fee provisions do not apply to properly styled mandamus petitions by indigent prisoners.⁶²

Retroactive application of the filing fee provisions. With respect to application of the filing fee requirements of 28 U.S.C. §1915(b) to complaints or appeals filed before enactment of the PLRA, there is a split in the courts of appeal. The 2d and 5th Circuits⁶³ generally apply the PLRA filing fees to appeals filed before enactment.

⁵⁶ Prisoners who genuinely have no money are not prevented from filing. Therefore, the provisions do not burden inmates' right of access to the courts.

⁵⁷ The Second Circuit remarked that the problem of frivolous prisoner lawsuits has been well-documented. Congress' conclusion on this point is amply supported and clearly reasonable.

⁵⁸ 107 F. 3d 227 (4th Cir. 1997).

⁵⁹ 106 F. 3d 128 (6th Cir. 1997).

⁶⁰ 112 F. 3d 1483 (11th Cir. 1997).

⁶¹ *In re Prison Litigation Reform Act*, 105 F.3d 1131 (6th Cir. 1997).

⁶² *Madden v. Myers*, 102 F.3d. 74 (3d Cir. 1996) and *Santee v. Quinlan*, 115 F.3d. 355 (5th Cir. 1997).

⁶³ The Fifth Circuit assesses fees even if the appellate briefing was completed before enactment. *Ayo v. Bathey*. 106 F.3d 98 (5th Cir. 1997). The Second Circuit generally assesses fees for appeals filed before enactment [*Covino v. Reopel*, 89F.3d 105, 108 (2d Cir. 1996)], but not to appeals that were fully briefed before enactment. *Duamutef v. O'Keefe*,

(continued...)

The 6th, 7th, and 10th Circuits have held that the PLRA filing fees do not apply to notices of appeal filed before enactment.⁶⁴

Repeat frivolous filers. The constitutionality of the PLRA's "three-strikes" provisions, requiring dismissal of a fourth IFP petition, has been upheld by the 5th, 7th,⁶⁵ and 11th Circuits.⁶⁶ The 8th,⁶⁷ 9th⁶⁸ and 10th⁶⁹ Circuits have interpreted and applied the "three-strikes" provision without engaging in a constitutional analysis. One district court applied strict scrutiny and held the provisions unconstitutional as a violation of the equal protection clause,⁷⁰ but this decision was overturned when the 8th Circuit dismissed the case.

In *Carson v. Johnson*,⁷¹ the 5th Circuit subjected the prisoner's claims to a rational basis review because the "three-strikes" provision does not impair a fundamental right. The PLRA's purpose of deterring frivolous and malicious lawsuits, in order to preserve scarce judicial resources, is a legitimate governmental interest. It is rational to distinguish between prisoners and other civil litigants. Prisoners have more free time than non-prisoners, and many have abused the judicial system in a manner that non-prisoners have not. The court also held that pre-PLRA dismissals count towards the three strikes.

The district court in Southern Iowa ruled in *Lyon v. Vande Krol*⁷² that 28 U.S.C. §1915(g) is unconstitutional as a violation of the equal protection clause of the Fifth Amendment because it treats prisoners who seek to proceed IFP differently from

⁶³(...continued)

98 F. 3d 22, 24 (2d Cir. 1996).

⁶⁴ *Miles v. United States*, 1996 U.S. App. LEXIS 30846 (6th Cir. 1996); *Thurman v. Gramley*, 97 F.3d 185, 188 (7th Cir.1996); and *White v. Gregory*, 87 F.3d 429 (10th Cir. 1996).

⁶⁵ The 5th Circuit decision is discussed in the text of this report. The 7th Circuit held in *Smith v. Officer Przblyski*, 1997 U.S. App. LEXIS 5540 (March 19, 1997) that the three-strikes provision applies to cases filed after three cases have been completed. Cases pending before the third strike is reached are not subject to dismissal under the three-strikes provision.

⁶⁶ *Mitchell v. Farcass*, 112 F.3d 1483 (11th Cir. 1997) (three-strikes provision applies to claims pending at the time the PLRA was enacted because the provisions are wholly procedural in nature).

⁶⁷ *Lyon v. Vande Krol*, ___ F. 3d ___, 1997 WL 638238 (8th Cir. 1997).

⁶⁸ *Marks v. Slocum*, 98 F. 3d 494 (9th Cir. 1996) (three-strikes provision is applicable to appeals pending at the time of enactment of the PLRA).

⁶⁹ *Green v. Nottingham*, 90 F. 3d 415 (10th Cir. 1996) (cases dismissed as frivolous or malicious or for failure to state a ground on which relief can be granted, before enactment of the PLRA, count toward the three-strikes).

⁷⁰ *Lyon v. Vande Krol*, 940 F. Supp. 1433 (S.D. Iowa 1996), dismissed on appeal, 1997 WL 638238 (8th Cir. October 17, 1997).

⁷¹ 112 F.3d 818 (5th Cir. 1997).

⁷² 940 F. Supp. 1433 (S.D. Iowa 1996), appeal pending to the 8th Circuit.

prisoners who can pay filing fees. This judge applied strict scrutiny analysis because he found that the provision burdens a "fundamental" right -- prisoners' access to the courts.

Upon an interlocutory appeal to the 8th Circuit, the *Lyon* case was dismissed pending payment of the filing fees.⁷³ Technically, the appellate court decided it lacked jurisdiction to consider the constitutional issues since the prisoner had failed to show that access to the courts had actually been impeded. Under a recent Supreme Court decision in *Lewis v. Casey*,⁷⁴ an "actual injury" must be established to have standing to assert a denial of access to the courts.

Exhaustion of Administrative Remedies.

A two-one majority of a panel in the 6th Circuit Court of Appeals held that the PLRA's required exhaustion of administrative remedies (before prisoners may file a federal civil rights suit) does not apply to cases pending on appeal when the PLRA was enacted. *Wright v. Morris*, 111 F.3d 414 (6th Cir. 1997). The majority construed the amendment of 42 U.S.C. §1997e(a) to mean the exhaustion requirement applies only to new actions filed on or after the PLRA was enacted. It contrasted the language of this provision with the PLRA's provision on immediate termination of consent decrees, noting that the latter expressly applies to existing consent decrees.

The dissenter argued that the exhaustion amendment amounts to a change in the jurisdiction of the federal courts. Under *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), this kind of statute may ordinarily be applied to pending cases, according to the dissent.

Physical Injury as Prerequisite for Certain Relief.

A district court in Southern Indiana has upheld the requirement of the PLRA that prisoners must prove a "physical injury" as a prerequisite to maintaining a civil action to recover for mental or emotional injuries suffered while in prison. *Zehner v. Trigg*, 952 F. Supp. 1318 (S.D. Ind. 1997).

The case involved a class action filed by inmates employed in the kitchen of the Indiana Youth Center, who claimed they were injured by exposure to asbestos. The court agreed with other courts who have ruled that "mere exposure to asbestos or other hazardous substances is not itself a physical injury." 952 F. Supp. at 1322. Moreover, the court applied the physical injury requirement of the PLRA to class members who were no longer in custody at the time the action was filed.

Limits on Attorneys Fees.

The courts of appeal are split on the application of the PLRA's attorneys fee limitations to services rendered before enactment. A majority of a 4th Circuit

⁷³ ___ F.3d ___, 1997 WL 638238 (8th Cir. 1997).

⁷⁴ 116 S. Ct. 2174 (1996).

panel ruled in *Alexander S. v. Boyd*⁷⁵ that the PLRA's limitations on attorneys' fees apply to any fee award made after enactment of the PLRA without regard to when the attorneys' work was done. The appellate court also held the limitations applicable in actions challenging conditions of confinement in juvenile facilities.

The Seventh and Eighth Circuits have reached a different interpretation of the PLRA's fee limitations provision. In *Cooper v. Casey*⁷⁶ and *Jensen v. Clarke*,⁷⁷ these appellate courts held the fee limitations do not apply retroactively to fees for services rendered before passage of the Act.

A district court in Northern New York has gone even further than the 7th and 8th Circuits in allowing recovery of attorneys' fees in excess of the PLRA's limits. In *Blissett v. Casey*,⁷⁸ the court held the fee limits are not applicable to attorneys who performed most of their work in representing indigent prisoners after enactment of the PLRA but were retained before that date. Applying the retroactivity analysis of *Landgraf v. USI Film Products*, the court said the PLRA would impermissibly impose new duties with respect to transactions already completed if the Act's fee limits were applied to attorneys retained before enactment. (The PLRA requires successful litigants to pay up to 25 percent of any judgment to satisfy the fees of their attorneys.) In the view of this court, application of the fee limits to attorneys retained before enactment of the PLRA would upset the reasonable expectations of the plaintiffs and their attorneys, and would deprive the prisoner-plaintiffs of full compensation for violations of their constitutional rights.

Recent Non-PLRA Prisoners' Civil Rights Cases

This section briefly highlights a few of the recent prisoners' civil rights cases that do not expressly interpret the Prison Litigation Reform Act.

Access to the courts. In *Lewis v. Casey*,⁷⁹ the Supreme Court invalidated a system-wide plan ordered by a district court in Arizona, which would have mandated detailed changes in the Arizona prison system to provide prison law libraries and legal assistance programs in each prison. The Court emphasized that an inmate claiming denial of access to the courts must prove an "actual injury," and cannot prove the injury merely by establishing there are inadequacies in the availability of legal materials or legal assistance. There is no abstract, free-standing right to a law library or legal assistance in prison. Moreover, if there are delays in availability of

⁷⁵ 113 F. 3d 1373 (4th Cir. 1997). The case was a class action suit challenging the conditions of confinement of juveniles housed in the South Carolina juvenile justice system. The plaintiffs won the case in 1995, and attorneys fees were awarded. Later, additional fees were requested for monitoring activities from February through August 1996. The PLRA was enacted in April 1996.

⁷⁶ 97 F.3d 914, 921 (7th Cir. 1996).

⁷⁷ 94 F.3d 1191, 1202 (8th Cir. 1996).

⁷⁸ 969 F. Supp. 118 (N.D.N.Y. 1997).

⁷⁹ 116 S. Ct. 2174 (1996).

legal materials that are reasonably related to legitimate penological interests, such delays are not of constitutional significance even if the delays result in actual injury.⁸⁰

The Alaska Supreme Court held in *Mathis v. Sauser*⁸¹ that the Alaska state constitution provides greater protection for Alaska prisoners than the "actual injury" test of *Lewis v. Casey*, in determining limits on access to the courts. A majority of the Court ruled that an inmate whose in-cell private computer printer was taken away from him need only show that the prison's policy of prohibiting inmates from possessing computer equipment in their cells was motivated by an intent to curtail access to the courts.

In forma pauperis civil appeals. The Supreme Court recently held that the equal protection and due process clauses of the 14th Amendment require a state to provide free access to its civil appellate courts to an indigent parent whose parental rights had been terminated by a trial court. *M.L.B., Petitioner v. S.L.J.*, 117 S. Ct. 555 (1996). The state of Mississippi allowed *in forma pauperis* filings at the civil trial level but not in civil appeals. The Court found that termination of parental status implicated a fundamental right. Moreover, since the proceeding deprived the indigent person of her status as a parent, the Court analogized the right of access on the same basis as criminal appeals of petty offenses, for which a right to a free transcript has been established.

The majority of the Court in the *M.L.B.* case attempted to confine its precedential effect to termination of parental rights cases, but the dissent warned that "the new-found constitutional right to free transcripts in civil appeals can [not] be effectively restricted to this case."⁸²

Application of ADA to prisoners. The courts of appeal have split on the issue of whether or not prisoners in state correctional facilities are covered by the Americans with Disabilities Act ("ADA"). The Fourth Circuit held in *Amos v. Maryland Department of Public Safety*⁸³ that the ADA does not apply to state prisoners, even though the Department of Justice has interpreted the ADA as applicable and has issued regulations to that effect. The Third⁸⁴ and Ninth Circuits⁸⁵ have held that the ADA applies to prisoners.

Mail and reading privileges of prisoners. A district court for the District of Columbia struck down a 1996 statute prohibiting distribution of sexually explicit material to prisoners on the ground the law (known as the "Ensign Amendment" to the fiscal 1997 appropriations act) facially violates the First Amendment. *Amatel v.*

⁸⁰ 116 S. Ct. At 2185.

⁸¹ 942 P. 2d 1117 (Sup. Ct. Alaska 1997).

⁸² 117 S. Ct. At 570.

⁸³ ___ F. 3d ___, 1997 WL 581652 (4th Cir. 1997).

⁸⁴ *Yeskey v. Pennsylvania Department of Corrections*, 118 F.3d 168 (3d Cir. 1997).

⁸⁵ *Armstrong v. Wilson*, 124 F. 3d 1019 (9th Cir. 1997).

Reno.⁸⁶ Prior to the Ensign Amendment, prison wardens could ban those publications that were detrimental to the security, good order, or discipline of the institution or those that might facilitate criminal activity. The court acknowledged that certain prisoners should not receive any sexually explicit materials and that certain sexually explicit materials should not be received by any prisoner. It nevertheless declared the law unconstitutional because it was too broad and failed to satisfy the content-neutral test of *Turner v. Safley*.⁸⁷

Prohibition on prison mutiny. The Seventh Circuit upheld a federal statute prohibiting "mutiny" in federal correctional facilities in *United States v. Overstreet*,⁸⁸ and applied it against inmates who were charged with instigating and assisting in a mutiny. The defendants had argued the statute is unconstitutionally vague since "mutiny" is not defined.

Due process in prison punishment. The lower federal courts have adopted varying interpretations of *Sandin v. Conner*,⁸⁹ a case in which the Supreme Court attempted to set new standards for due process claims by prisoners who are punished for bad behavior in prison. Under *Sandin*, disciplinary confinement does not trigger due process protections unless the punishment represents an atypical and significant hardship on inmates in relation to ordinary prison life.

An inmate's placement in administrative custody for 15-months pending investigation of his alleged rape of a female corrections officer did not violate due process in *Griffin v. Vaughn*.⁹⁰ Similarly, a prisoner's transfer without notice or a hearing to a higher-security prison because of a romantic relationship with a corrections officer did not violate the inmate's due process rights in *Freitas v. Ault*.⁹¹

The Second Circuit may be inclined to adopt a more restrictive view of *Sandin*, however, than that reflected in the above cases from the Third and Eighth Circuits. In two recent cases, the Second Circuit remanded cases to the district court because appropriate findings were not made that 180-days segregated confinement for assaulting a fellow inmate⁹² and 180-days in administrative confinement for a physical altercation with corrections officers⁹³ did not impose an atypical and significant hardship in relation to ordinary prison life. In the latter case, the court hinted that New York prisoners may have a due process liberty interest in avoiding long-term administrative confinement.

⁸⁶ ___ F. Supp. ___, 1997 WL 468167 (D.D.C. 1997).

⁸⁷ 482 U.S. 78 (1987).

⁸⁸ 106 F.3d 1354 (7th Cir. 1997).

⁸⁹ 115 S. Ct. 2293 (1995).

⁹⁰ 112 F. 3d 703 (3d Cir. 1997).

⁹¹ 109 F. 3d 1335 (8th Cir. 1997).

⁹² *Miller v. Selsky*, 111 F.3d 7 (2d Cir. 1997).

⁹³ *Brooks v. DiFasi*, 112 F.3d 46 (2d Cir. 1997).

Deliberate indifference to serious medical needs. While rejecting several constitutional arguments of Hispanic inmates, a district court for the District of Columbia found the inmates' rights were violated by the failure to provide Spanish translators or to offer written Spanish instructions at medical and health encounters in prison.⁹⁴ These failures amounted to "deliberate indifference to serious medical needs" in violation of the Eighth Amendment's prohibition of cruel and unusual punishment. The practice of using untrained staff or other inmates as moderators violated the inmates' due process rights to confidentially in medical information. Similarly, failure to provide translation at disciplinary and parole hearings violated due process.

Conclusion

The Prison Litigation Reform Act, Public Law 104-134, made major procedural and substantive changes in the authority of the federal courts to remedy prisoners' grievances concerning prison conditions, including overcrowding. The Act also reformed the procedures applicable to federal civil rights cases filed by state and federal prisoners who seek to litigate about prison conditions and their conditions of confinement.

The Reform Act, which took effect April 26, 1996, curtails the authority of federal courts to remedy prison conditions, including overcrowding; requires that any prospective relief be drawn as narrowly as possible; requires prisoners to exhaust all state and federal administrative remedies before filing suit; requires payment of filing fees; restricts the availability of attorney's fees; directs the courts to screen and dismiss as soon as possible petitions that are frivolous, malicious, or fail to state a claim on which relief can be granted; bars *in forma pauperis* petitions if three or more earlier petitions were dismissed as frivolous, malicious, or for failure to state a claim -- except where the prisoner is in imminent danger of serious physical injury; requires that any damages awarded to a prisoner must be applied to satisfy pending restitution orders against the prisoner; and requires that reasonable efforts must be taken to notify victims of the prisoner that an award is pending.

Before passage of the Prison Litigation Reform Act, virtually all prisoner civil rights cases were filed *in forma pauperis*. The Reform Act mandates payment of filing fees, unless the prisoner has no funds whatsoever.

It is anticipated that, in due course, the Prison Litigation Reform Act will lead to a significant reduction in prisoner civil rights petitions. In the short term, however, prisoners and advocates of prisoner rights are challenging the constitutionality and interpretation of many provisions of the Act.

The appellate courts have upheld the constitutionality of the provisions of 18 U.S.C. § 3626 that limit the authority of federal courts in prison conditions cases and permit immediate termination of existing consent decrees. The Fourth and Eighth Courts of Appeal have upheld these provisions and either ordered termination of an

⁹⁴ Franklin v. District of Columbia, 960 F. Supp. 394 (D.D.C. 1997).

existing consent decree or remanded to the district court to order termination. The Second Circuit also upheld the constitutionality of §3626, but interpreted the term "relief" as not including consent decrees; the Second Circuit apparently assumes the state courts will enforce the portions of the consent decree that exceed federal rights under state contract law.

The *in forma pauperis* filing provisions of the PLRA, which require those prisoners who have money in their prison trust fund accounts to pay filing fees, have apparently been held constitutional by every appellate court to consider the issue. The appellate courts have also upheld the constitutionality of the "three-strikes" provision that requires dismissal of the fourth *in forma pauperis* petition if three earlier cases were dismissed as frivolous, malicious, or for failure to state a claim.

With respect to the PLRA's limits on attorneys fees, the courts of appeal have split on whether or not the limits apply to attorney services rendered (but not paid for) before enactment.

In a non-PLRA case, the Supreme Court held in *Lewis v. Casey* that there is no abstract right of prisoners for access to legal materials or legal assistance. An inmate claiming denial of access to the courts must prove an "actual injury," which cannot be proved merely by showing deficiencies in the prison law library.

The lower federal courts have split on whether or not the Americans with Disabilities Act (ADA) applies to state prisoners. The Third and Ninth Circuits apply the ADA to prisoners. The Fourth Circuit held in *Amos v. Maryland* that it does not apply, even though the Justice Department has issued regulations applying the ADA to prisoners.