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1-1-2008

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### Recommended Citation

Rigby, Jared (2008) "Section 1983 Actions in North Dakota: An Empirical Study of Agency Policies and Law Enforcement and Correctional Officers," *North Dakota Law Review*. Vol. 84 : No. 2 , Article 4.  
Available at: <https://commons.und.edu/ndlr/vol84/iss2/4>

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# SECTION 1983 ACTIONS IN NORTH DAKOTA: AN EMPIRICAL STUDY OF AGENCY POLICIES AND LAW ENFORCEMENT AND CORRECTIONAL OFFICERS

JARED RIGBY\*

## I. INTRODUCTION

Title 42, Section 1983 of the United States Code<sup>1</sup> prohibits public officials from violating individuals' civil rights and liberties guaranteed by the Constitution and federal law.<sup>2</sup> The Act seeks to accomplish its objective by providing a civil cause of action for plaintiffs whose civil rights and liberties are infringed by government actors.<sup>3</sup> Section 1983 is frequently employed to sue state and local law enforcement and corrections officers.<sup>4</sup> Although the legal elements of Section 1983 apply equally throughout the United States, the effect of Section 1983 may vary depending on each jurisdiction studied.<sup>5</sup> For instance, individuals in some areas of the nation seem to be particularly at risk of having their individual constitutional rights violated.<sup>6</sup> In other jurisdictions, however, the government appears to be burdened by an unusual amount of frivolous Section 1983 claims.<sup>7</sup>

To date, no scholarly study has concentrated solely on the use or effect of Section 1983 in North Dakota.<sup>8</sup> As such, the first objective of this

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1. 42 U.S.C. § 1983 (1996).

2. *Id.*

3. *Id.*

4. John L. Worrall, *Culpability Standards in Section 1983 Litigation Against Criminal Justice Officials: When and Why Mental State Matters*, 47 *CRIME & DELINQUENCY* 28, 31-32 (2001).

5. See Darrell L. Ross, *Emerging Trends in Correctional Civil Liability Cases: A Content Analysis of Federal Court Decisions of Title 42 United States Code Section 1983: 1970-1994*, 25 *J. CRIM. JUST.* 501, 511-12 (1997) (reporting that the Second, Fifth, Seventh, Eighth, and Ninth United States Federal Circuits decided 60% of the cases studied and reasoning that "these five circuits share a common feature of large correctional populations, both at the prison and jail levels").

6. See *id.* at 510 (determining that between 1970 and 1978, prisoners prevailed in 89% of cases involving unjustified discipline).

7. See *id.* (showing that among the cases studied from 1987 to 1994, the government successfully defended itself in 90% of the Section 1983 claims involving allegations of speech violations).

8. *But see* Michael S. Vaughn et al., *Assessing Legal Liabilities in Law Enforcement: Police Chiefs' Views*, 47 *CRIME & DELINQUENCY* 3, 6, 16-17 (2001) (presenting empirical findings

project is to determine whether the burden imposed by Section 1983 on North Dakota agencies is comparable to the burden shouldered by other jurisdictions. In addition, this project seeks to discover the trends associated with Section 1983 claims (i.e., the constitutional amendments, provisions, and agency policies most frequently implicated), both generally and in North Dakota specifically. Furthermore, the study provides recommendations by which North Dakota law enforcement and correctional agencies may strengthen their administrative policies.

Comparative analysis involving the State of North Dakota, but unrelated to Section 1983 claims, occasionally report North Dakota to be unique among the majority of other jurisdictions.<sup>9</sup> In regard to the characteristic trends of Section 1983 claims, however, the answer initially appears to be that many of the national trends commonly associated with Section 1983 characteristics hold true in North Dakota. Within this large umbrella-like hypothesis is a more finite and quantitatively based null hypothesis: there is no statistical relationship between the North Dakota policies implicated in Section 1983 claims and those policies implicated in other American jurisdictions.

Section II contains a review of the literature and empirical studies involving Section 1983 issues.<sup>10</sup> Section III provides an explanation of the methodology employed in the current study.<sup>11</sup> The results of the study are presented in Section IV.<sup>12</sup> In Section V, the results of the current study are discussed generally in light of empirical studies involving Section 1983 issues.<sup>13</sup>

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relating to a quantitative study of Section 1983 liability among police chiefs in Texas); *see also* Ross, *supra* note 5, at 507-12 (providing empirical data pertaining to Section 1983 claims in the federal correctional setting generally).

9. *See, e.g.*, Dean J. Hass, *Falling Down on the Job: Workers' Compensation Shifts From a No-Fault to a Worker-Fault Paradigm*, 79 N.D. L. REV. 203, 209 (2003) ("North Dakota is one of five states that operate an exclusive state fund to insure workers' compensation risk."); *see also, e.g.*, Christopher Paul Fischer, "I Hear You Knocking, But You Can't Come In": *The North Dakota Supreme Court Again Declines to Decide Whether the State Constitution Precludes a Good Faith Exception to the Exclusionary Rule* *State v. Herrick*, 1999 N.D. 1, 588 N.W.2d 846, 76 N.D. L. REV. 123, 128 (2000) (stating that North Dakota has uniquely protected the privacy of an individual's home by maintaining legislation that requires law enforcement to knock-and-announce themselves prior to entry).

10. *See* discussion *infra* Part II (focusing on the history of Section 1983, the text and interpretations of Section 1983, and Section 1983 claims in law enforcement and corrections arenas).

11. *See* discussion *infra* Part III (studying all reported Section 1983 cases involving law enforcement and correctional agencies in North Dakota between January 1997 and December 2007).

12. *See* discussion *infra* Part IV (reporting the agencies involved, characteristics of plaintiffs, number of cases reported, legal authorities and arguments employed, and policies implicated).

13. *See* discussion *infra* Part V (analyzing whether Section 1983 is a burden to North Dakota agencies, determining how the statistical trends of Section 1983 cases in North Dakota compare to other jurisdictions, and offering recommendations for strengthening North Dakota policies).

## II. LITERATURE REVIEW

State and local government officials that violate individuals' rights may be sued under a variety of legal actions.<sup>14</sup> In this way, Section 1983 serves as merely one of many causes of action available to individuals that believe the government has violated their rights.<sup>15</sup> A great deal has been written about Section 1983 and its predecessor statute over the years.<sup>16</sup> The earliest court cases discussing issues at least somewhat related to Section 1983 claims date back to the late 1800s and early 1900s.<sup>17</sup> In the 1960s, the United States Supreme Court's holding in *Monroe v. Pape*<sup>18</sup> led to a significant amount of scholarly research and discussion revolving around a host of Section 1983 issues.<sup>19</sup> This section presents the history of Section 1983, introduces the text and relevant interpretation of Section 1983, and explains the relationship between Section 1983 claims and the professions of law enforcement and correctional officers.

### A. HISTORY OF SECTION 1983

After the resolution of the Civil War, many public officials in Southern state and local governments maintained Ku Klux Klan (KKK) membership.<sup>20</sup> Intent on maintaining a system of white supremacy under girded by government action and terror tactics, officials with KKK affiliation used their public positions to violate the constitutional rights of African-Americans.<sup>21</sup> To combat these illegal and dangerous tactics, Congress enacted the Civil Rights Act of 1866,<sup>22</sup> which criminalized violations of federally guaranteed rights perpetrated by state and local government officials.<sup>23</sup> In 1871, Congress added civil remedies to the statute and codified the 1866

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14. See Ross, *supra* note 5, at 502 (discussing petitions of habeas corpus); see also Dennis E. Hall et al., *Suing Cops and Corrections Officers*, 26 POLICING: AN INT'L J. OF POLICE STRATEGIES & MGMT 529, 532, 535 (2003) (speaking of negligence in performance of duty).

15. See Randy Means, *The History and Dynamics of Section 1983*, POLICE CHIEF, May 1, 2004, at 6, available at [www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=299&issue\\_id=52004](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=299&issue_id=52004) (discussing various methods of suing government officials).

16. Hall, *supra* note 14, at 529.

17. See, e.g., *Barney v. City of New York*, 193 U.S. 430, 438-40 (1904) (discussing the need to protect individuals' constitutional rights against state governmental officials); *Virginia v. Rives*, 100 U.S. 313, 334 (1879) (stating that the government acts through the decisions of agencies and agency officials and that such acts may potentially violate constitutional rights and liberties).

18. 365 U.S. 167 (1961).

19. Hall, *supra* note 14, at 529-30.

20. Michael S. Vaughn & Lisa F. Coomes, *Police Civil Liability Under Section 1983: When Do Police Officers Act Under Color of Law?*, 23 J. CRIM. JUST. 395, 395-96 (1995).

21. *Id.* at 395.

22. 42 U.S.C. § 1983 (1996).

23. *Id.*

and 1871 laws as Title 42, Section 1983 of the United States Code, the “Ku Klux Klan Act.”<sup>24</sup> At the time Section 1983 was enacted, no controversy ensued regarding either its necessity or application.<sup>25</sup>

## B. THE TEXT AND SUBSEQUENT INTERPRETATION OF SECTION 1983

Generally speaking, Section 1983 prohibits government officials from violating the constitutional rights of individuals.<sup>26</sup> If such rights are violated by government officials, Section 1983 provides the person injured with legal and equitable relief.<sup>27</sup> In order to prevail in a Section 1983 claim, the plaintiff must prove that the defendant (1) acted under color of law, and (2) deprived the plaintiff of his or her constitutional or federal law rights.<sup>28</sup> Section 1983 is a method of remedying federal rights, and is not in and of itself a source of substantive rights.<sup>29</sup>

### 1. *Acting Under Color of Law*

From the time of the statute’s enactment in 1866 until 1961, a person acted under color of law only if that person’s questionable acts were made in accordance with the person’s lawful authority.<sup>30</sup> Practically speaking, this meant that an officer that engaged in misconduct was considered to be acting outside the scope of his or her authority, thus not acting “under color of law.”<sup>31</sup> Since that time, however, the Supreme Court has, through a series of four cases, modified its interpretation of what it means to “act under color of law.”<sup>32</sup>

First, in *United States v. Classic*<sup>33</sup> the Court considered whether Louisiana election officials violated individuals’ constitutional rights by altering and fraudulently counting ballots in a primary election for congressman.<sup>34</sup> The defendants argued that they were not government

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24. *Id.*

25. Vaughn & Coomes, *supra* note 20, at 395-96. At least one reason that Section 1983 originally stirred little controversy was that Reconstruction efforts, of which Section 1983 was one, fell apart, thereby leaving the Act unenforced for many decades. Lisa E. Key, *Private Enforcement of Federal Funding Conditions Under § 1983: The Supreme Court’s Failure to Adhere to the Doctrine of Separation of Powers*, 29 U.C. DAVIS L. REV. 283, 303-06 (1996).

26. 42 U.S.C. § 1983 (1996).

27. *Id.*

28. *Id.*

29. *Baker v. McCollan*, 443 U.S. 137, 145 (1979).

30. *United States v. Classic*, 313 U.S. 299, 326 (1941); Vaughn & Coomes, *supra* note 20, at 397.

31. *Classic*, 313 U.S. at 326; Vaughn & Coomes, *supra* note 20, at 397-98.

32. Vaughn & Coomes, *supra* note 20, at 397-98.

33. 313 U.S. 299 (1941).

34. *Classic*, 313 U.S. at 307-08.

officials at the time of the questionable actions; instead, they were employees of the Democratic Party.<sup>35</sup> The Court disagreed and reasoned that the action was taken “under color of state law” because the defendants were given power by state law to count and certify election ballots, and then violated state law (a criminal action) by fraudulently tampering with the election ballots.<sup>36</sup> In short, *Classic* unlocked the door to what was previously a deadbolt interpretation of viewing the misconduct of public officials as action outside the scope of authority.

Second, the Court turned the handle when it issued its ruling in *Screws v. United States*.<sup>37</sup> In that case, the Court faced the decision of whether certain law enforcement officers violated a citizen’s Fourteenth Amendment due process rights when the officers hit the citizen with clubs until he was unconscious and died.<sup>38</sup> The Court held that, in violation of criminal law, the officers used excessive force, and that “officers who . . . perform their official duties are included [as having taken action under color of law] whether they hew to the line of their authority or overstep it.”<sup>39</sup>

In *Monroe v. Pape*,<sup>40</sup> the Court kicked the door wide open with regard to the application of the *Classic* and *Screws* extensions of the “under color of law” standard.<sup>41</sup> In *Monroe*, the Chicago police barged into Monroe’s residence in the middle of the night without a search warrant.<sup>42</sup> At gun point, Monroe and his family were made to stand without clothes while police officers searched their home for evidence relating to a two day-old murder.<sup>43</sup> Monroe was then detained at the police station for ten hours without being advised of the charges or being allowed to call his attorney.<sup>44</sup> Prior to *Monroe*, the Court’s “under color of law” standard extensions applied only to criminal law violations.<sup>45</sup> In *Monroe* however, the Court held that a person that acts under color of law to deprive a person of constitutional or federal law rights may be subject to civil liability.<sup>46</sup> The *Monroe*

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35. Brief of Defendant and Appellees at \*13-14, *Classic*, 313 U.S. 299 (No. 618), 1941 WL 52906.

36. *Classic*, 313 U.S. at 326.

37. 325 U.S. 91 (1945).

38. *Screws*, 325 U.S. at 92-94.

39. *Id.* at 111.

40. 365 U.S. 167 (1961).

41. See *Monroe*, 365 U.S. at 180, 191 (stating, in essence, that extending the Court’s “under color of law” standard, as used in the criminal context to that of the civil context, is in accordance with Congress’s intentions).

42. *Id.* at 169.

43. *Id.*

44. *Id.*

45. *Id.* at 184-87.

46. *Id.*

Court also held that the City of Chicago could not be sued using a Section 1983 claim because it was not a “person” within the meaning of the statute.<sup>47</sup>

And fourth, in *Monell v. Department of Social Services of the City of New York*,<sup>48</sup> the Court extended the reach of Section 1983 even further by considering how the statute should be applied to a local government-defendant.<sup>49</sup> In 1978, a group of female employees sued their employer, New York City, alleging that an official policy requiring pregnant employees to take unpaid leaves of absence before the employees so desired, violated their constitutional rights.<sup>50</sup> The Court held that while a local government cannot be sued “for an injury inflicted solely by its employees or agents,” the government may be liable when its “policy or custom” inflicts the injury.<sup>51</sup> Some of the reasons that the Court expanded the application of Section 1983 were that civil rights law encourages broad remedies, congressional debates of the Ku Klux Klan Act of 1871 did not expressly forbid such an interpretation, and a case decided two years after enactment of the Act suggested such inclusion.<sup>52</sup>

## 2. *Depriving Plaintiff of Constitutional or Federal Law Rights*

Proving that a person was deprived of a constitutional or federal law right in a Section 1983 suit is accomplished by identifying the official’s alleged misconduct and then sufficiently showing that the alleged misconduct is a violation of a constitutional or federal law right. For instance, in

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47. *Id.* at 190-92.

48. 436 U.S. 658 (1978).

49. *Monell*, 436 U.S. at 662.

50. *Id.* at 661.

51. *Id.* at 694.

52. *Id.* at 685, 688-89. Interwoven through the review were two separate but related principles that, if left unmentioned, would constitute a less-than-thorough explanation of Section 1983 claims; first, an entirely different line of cases exists wherein the Court interpreted the meaning of “policy or custom.” See *City of St. Louis v. Praprotnik*, 485 U.S. 112, 119 (1988) (stating that those with actual authority to act on behalf of the government is determined on a case by case basis in the state courts); *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986) (holding that “where action is directed by those who establish governmental policy, the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly”); *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24 (1985) (“Proof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell*, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker.”); *Owen v. City of Independence*, 445 U.S. 622, 638 (1980) (stating that “neither history nor policy supports a construction of [Section] 1983 that would justify [a grant of] qualified immunity . . . to the city”). And second, although Section 1983 only provides remedies for civil rights violations involving state and local government actors, *Bivens* actions provide citizens with the Section 1983 equivalent of remedies for civil rights violations in the federal context. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 395-96 (1971).

*Blades v. Schuetzle*<sup>53</sup> an inmate-plaintiff argued that prison officials violated his Eighth Amendment right to be free of cruel and unusual punishment by failing to protect him from the attack of another inmate.<sup>54</sup> The plaintiff also argued that a corrections officer violated his Fourteenth Amendment right of equal protection by making a statement the plaintiff considered to be racially discriminatory.<sup>55</sup>

In relation to the first argument, the court held that although prison officials may have been negligent in protecting Blades from the attack of another inmate, the officials' actions did not satisfy the standard of deliberate indifference required of cruel and unusual punishment arguments.<sup>56</sup> With regard to the second argument, the court held that even though the officer's race-based comments were "thoroughly offensive," without more the comments were not an act of race discrimination.<sup>57</sup> Therefore, although Blade's claims were ultimately found to be without merit, his case provides an accurate illustration of the requisite structure needed to successfully prove deprivation of a constitutional right.<sup>58</sup>

Section 1983 does not require the plaintiff to prove the defendant was a government agent actually acting in his or her official capacity at the time of the alleged violation.<sup>59</sup> Instead, a person may be liable for civil damages if he or she acted under color of law *and* deprived another person of a right given through constitutional or federal law.<sup>60</sup> Although Section 1983 has the potential to rule with a heavy hand, it also has limitations.<sup>61</sup> Perhaps its greatest limitation is its scope—besides the two elements of the statute (which act as narrowing agents), Section 1983 only reaches state and local governments, as entities, when their policies or customs inflict the injury.<sup>62</sup>

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53. 302 F.3d 801 (8th Cir. 2002).

54. *Blades*, 302 F.3d at 803.

55. *Id.*

56. *Id.* at 803-04.

57. *Id.* at 805.

58. *See id.* at 803-05 (upholding the district court's order of summary judgment because the plaintiff could not prove the defendant's "requisite state of mind" and the discrimination claim was not actionable).

59. 42 U.S.C. § 1983 (1996).

60. *Id.*

61. *See Worrall, supra* note 4, at 31-32 (recognizing that Section 1983 potentially applies to all state government officials and that an immense amount of Section 1983 litigation has arisen since about 1970); *see also Means, supra* note 15, at 5-6 (recording many Section 1983 judgments as being in the million dollar range).

62. *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658, 694 (1978).

### C. LAW ENFORCEMENT/CORRECTIONS AND SECTION 1983 CLAIMS

Section 1983 is currently being used to sue officers in state and local law enforcement and correctional agencies more than any other group of officials; similarly, no cause of action is employed as frequently as Section 1983.<sup>63</sup> Many law enforcement officers are concerned that they will be sued in their personal capacities for a work related decision and that their departments will refuse to represent them.<sup>64</sup>

Some proponents of the contemporary interpretations of Section 1983 argue that the statute is vital and fulfills its intention to reduce police misconduct.<sup>65</sup> In addition, these proponents state that Section 1983 provides a “check” on law enforcement officers and enables the number of police abuses to be reduced.<sup>66</sup> Furthermore, Section 1983 serves an important role in ensuring that the police are reminded that they are subject to the law just like other citizens.<sup>67</sup>

On the other hand, many law enforcement and correctional officers argue that although the purpose of Section 1983 is to deter police misconduct, Section 1983 as it now exists, goes too far.<sup>68</sup> Some of these officers state that their fear of being sued causes them, at times, to not act when they otherwise would.<sup>69</sup> In this way, Section 1983 potentially breeds inaction and may have a type of paralyzing effect on officers.<sup>70</sup> In turn, unwarranted inaction thwarts justice, increases the likelihood of potential harm to the public and officers—a type of occupational hazard, and interferes with job performance.<sup>71</sup>

Recognizing arguments from proponents and opponents of Section 1983, scholars have conducted a number of relevant studies.<sup>72</sup> The studies (both quantitative and qualitative in nature) combine to serve an important

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63. Worrall, *supra* note 4, at 28, 31-32; Means, *supra* note 15, at 1.

64. Vaughn, *supra* note 8, at 3, 6, 16-17.

65. *Id.* at 4.

66. *Id.*

67. *Id.*

68. *Id.* at 3.

69. *Id.*

70. *Id.*

71. *Id.*

72. See Ross, *supra* note 5, at 502 (discussing civil liability in the correctional setting); see also Sarah Eschholz, *Police Sexual Violence and Rape Myths Civil Liability Under Section 1983*, 29 J. OF CRIM. JUST. 389, 390-405 (2001) (researching ways in which perpetrators rationalize sexual violence of victims); Vaughn, *supra* note 8, at 16-23 (exploring police chiefs' views regarding civil liability); Robert D. Hanser, *Inmate Suicide in Prisons: An Analysis of Legal Liability Under 42 USC Section 1983*, 82 PRISON J. 459, 465-75 (2002) (studying the trends and legal challenges facing correctional officers in regards to inmate suicide); Hall, *supra* note 14, at 529 (addressing the attitudes and experiences of law enforcement and correctional officers that potentially face civil liability).

function in understanding how Section 1983 claims are being used contemporarily. The five cases most similar in subject matter centered on the following issues: (1) trends of civil liability in correctional facilities; (2) legal liabilities in law enforcement; (3) legal liability of inmate suicides in prison; (4) civil liability for perpetrating sexual violence; and (5) differences and similarities of police officers' and correctional officers' experiences in being sued civilly.

### 1. *Trends of Civil Liability in Correctional Facilities*

The first and most relevant study concentrated on the trends of correctional civil liability in the United States.<sup>73</sup> Prior to the study, a significant amount of research existed regarding Section 1983 and its application to law enforcement across the nation, and especially in the correctional setting.<sup>74</sup> However, a gap existed in identifying the correctional policies that posed "the greatest risk of litigation."<sup>75</sup> Seeing this, Professor Ross, the project's architect, conducted an extensive study of Section 1983 actions across the entire United States District Court system.<sup>76</sup> The project's focus spanned the years of 1970 to 1994.<sup>77</sup>

Ross found that during the first five years of his study, the number of Section 1983 lawsuits filed increased by about 200% and the number of individuals incarcerated increased by 45%.<sup>78</sup> In addition, during the second five years of the study, the number of Section 1983 filings increased approximately 100% and the number of prisoners increased by almost the same amount.<sup>79</sup> Similar increases were found throughout the rest of the project.<sup>80</sup>

Interestingly, 92% of the cases studied were filed without the assistance of legal counsel.<sup>81</sup> In addition, Ross concluded that about 4% of the prison population studied filed a Section 1983 lawsuit during the span of the study.<sup>82</sup>

Ross also studied trends associated with the various types of lawsuits.<sup>83</sup> In doing so, he identified sixteen categories in which inmates frequently file

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73. Ross, *supra* note 5, at 502.

74. *Id.*

75. *Id.* at 505.

76. *Id.* at 502.

77. *Id.*

78. *Id.* at 507.

79. *Id.*

80. *Id.*

81. *Id.* at 509; *see* 28 U.S.C. § 1915 (1976) (establishing the federal pauper's statute).

82. Ross, *supra* note 5, at 507.

83. *Id.* at 508-11.

Section 1983 lawsuits.<sup>84</sup> For instance, during the period of time studied, about 4% of the cases were brought under an argument of cruel and unusual punishment.<sup>85</sup> Similarly, the plaintiff claimed the violation of free speech rights in another 4% of the cases.<sup>86</sup> And, in approximately 7% of the cases, a failure to protect a claim was argued.<sup>87</sup> Overall, Ross acknowledged that the number of Section 1983 claims would continue to increase proportionately to any increase in the prison population.<sup>88</sup> At the same time, however, Ross speculated that legislation aimed at limiting frivolous law suits may cause the number of Section 1983 claims to decline significantly.<sup>89</sup>

## 2. *General Legal Liabilities of Law Enforcement Officers*

In 2001, Professor Vaughn recognized the unique status of opinions regarding civil liability for law enforcement officers.<sup>90</sup> Vaughn's objective was to provide empirical evidence as to whether police civil liability law has in fact caused "lawsuit paranoia" and severely limited enforcement of the law.<sup>91</sup> Vaughn was also committed to discovering whether suing police officers was exposing the extreme cases of police misconduct that many people claim is commonplace in the police subculture.<sup>92</sup>

Vaughn surveyed police chiefs in Texas.<sup>93</sup> Sixty-one percent stated that the potential for being sued "only mildly affected or had no effect at all on their departmental functions."<sup>94</sup> In addition, 92% of those surveyed disagreed with the statement that "members of the public should not be able to bring a civil lawsuit against the police."<sup>95</sup>

In a similar way, only 36% of the participants reported being sued personally, or having one of their subordinates sued, in the previous three years.<sup>96</sup> Of those civil suits reported, the most frequently claimed misconduct was assault and battery or excessive force; false arrest, imprisonment,

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84. *Id.* at 508.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 513.

89. *Id.*

90. Vaughn, *supra* note 8, at 3-4.

91. *Id.* at 3.

92. *Id.* at 3-4.

93. *Id.* at 5.

94. *Id.* at 6.

95. *Id.* at 7.

96. *Id.*

or detention; and unlawful searches or seizure.<sup>97</sup> Most interesting was the finding that although 86% of the police chiefs felt that “some lawsuits filed against the police help make police more professional,” 68% of police chiefs could not state any policy that was actually altered as a result of actual or potential civil litigation.<sup>98</sup>

### 3. *Prison Suicides and Civil Liability*

In 2002, Professor Hanser studied the legal liability of correctional officers in inmate suicide cases using the framework of Section 1983.<sup>99</sup> Previous to the study, the Court held that “deliberate indifference” toward an inmate’s serious illness or injury was a violation of the cruel and unusual punishment of the Eighth Amendment.<sup>100</sup> However, the Court had not yet ruled as to whether an officer’s alleged actions in relation to an inmate’s suicidal tendencies were subject to the deliberate indifference standard.<sup>101</sup> Therefore, Hanser analyzed inmate suicide cases within the various state and lower federal courts in order to see how the issue was being handled.<sup>102</sup>

As part of the findings, Hanser concluded that a narrow interpretation of the deliberate indifference standard existed in Section 1983 cases.<sup>103</sup> Many times, this meant that as long as the defendant-officer acted “responsibly and professionally,” the officer was not liable under Section 1983.<sup>104</sup> The study also considered the policies frequently at issue in various Section 1983 cases.<sup>105</sup> For instance, in one case, the prison’s psychiatrist was sued for, among other things, not committing an inmate to a forensic hospital.<sup>106</sup> The psychiatrist argued that he closely applied medical standards and prison policy criteria in choosing not to commit the inmate to the hospital.<sup>107</sup> In view of such considerations, Hanser recommended that corrections administrators review their mental health policies with an eye toward protecting individuals’ constitutional rights.<sup>108</sup>

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97. *See id.* at 7-8 (finding that, of the cases reported, the most frequently claimed misconduct was assault and battery/excessive force 22%; false arrest/imprisonment/detention 19%, and unlawful search/seizure 10%).

98. *Id.* at 7, 12.

99. Hanser, *supra* note 72, at 459-60.

100. *See id.* at 460-61 (citing *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976)).

101. *Id.*

102. *Id.*

103. *Id.* at 474.

104. *Id.* at 475.

105. *See id.* at 465-66, 468 (discussing the policies at play in *Carrigan v. State of Delaware*, 957 F. Supp. 1376, 1376 (D. Del. 1997) and *Jess v. Wagner*, No. 94-7211 (E.D. Pa. 1996)).

106. *Id.* at 467 (citing *McKee v. Turner*, 124 F.3d 198, 198 (6th Cir. 1997)).

107. *Id.*

108. *Id.*

#### 4. *Civil Liability for Perpetrating Sexual Violence*

A crime of increasing frequency occurs when police and correctional officers improperly use their authority to commit sexual violence.<sup>109</sup> A law enforcement or correctional officer perpetrates sexual violence when he or she uses implied public trust or legal access to engage in sexual relations.<sup>110</sup> Police sexual violence (PSV) includes acts such as “unobtrusive viewing, sexual harassment, kidnapping, rape, and murder.”<sup>111</sup> Section 1983 is regularly used to hold police and correctional officers liable for perpetrating PSV.<sup>112</sup>

In Eschholz’s 2001 study of various state and local police and correctional agencies in the United States, eighteen Section 1983/PSV cases were categorized according to three criteria.<sup>113</sup> The criteria included whether each case established the color of law requirement, violated the Fourteenth Amendment’s due process clause, or violated the Eighth Amendment’s cruel and unusual punishment’s clause.<sup>114</sup> The project used content analysis to determine how “rape myths” operate in the law enforcement and correctional settings.<sup>115</sup> In doing so, Eschholz found that many lower courts have legitimized the PSV-plaintiff claim that a violation of “bodily integrity” is a violation of the liberty right granted by the Fourteenth Amendment.<sup>116</sup>

In addition, and although not tested conclusively, it may be within the Court’s substantive due process jurisprudence to consider PSV cases a violation “when police act with improper motives to egregiously, arbitrarily, and capriciously harm citizens.”<sup>117</sup> And lastly, in order to successfully argue that a PSV incident violated the Eighth Amendment’s cruel and

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109. See Eschholz, *supra* note 72, at 389-90 (researching ways in which perpetrators rationalize sexual violence of victims). See, e.g., Ksl.com, *Former Police Officer May Have Used Badge to Obtain Sexual Favors*, [www.ksl.com/index.php?nid=148&sid=2998888](http://www.ksl.com/index.php?nid=148&sid=2998888) (last visited May 30, 2008) (reporting that a police officer admitted to threatening to cite a woman for child neglect if the woman did not perform certain sexual favors for the officer).

110. Eschholz, *supra* note 72, at 389.

111. *Id.*

112. *Id.* at 390.

113. *Id.* at 389.

114. *Id.*

115. See *id.* at 390 (explaining the methodology of reading through various PSV cases and categorizing the cases based on whether the perpetrator appeared to justify the PSV by telling himself or herself: (1) “the victim asked for it,” (2) “no means yes,” (3) “s/he owes me,” (4) “denial of injury,” (5) “no one can be raped against their will,” (6) “the victim cried rape,” (7) “sluts/whores cannot be raped,” or (8) “women cannot rape”).

116. *Id.* at 400 (citing *Jones v. Wellham*, 104 F.3d 620, 628 (4th Cir. 1997); *Bennett v. Pippin*, 74 F.3d 578, 584 (5th Cir. 1996); *Battista v. Cannon*, 934 F. Supp. 400, 405 (M.D. Fla. 1996); *Carney v. White*, 843 F. Supp. 462, 466 (E.D. Wis. 1994)).

117. See *id.* (making inferences from the Court’s holding in *Rogers v. City of Little Rock*, 152 F.3d 790 (8th Cir. 1998)).

unusual punishment clause, the Court will likely require the plaintiff to “show that: [1] the assault violated evolving standards of decency[,]”<sup>118</sup> or failed to provide inmates with the minimum civilized measure of life’s necessities[;]<sup>119</sup> and [2] was perpetrated with the culpable mental state of deliberate indifference[,]<sup>120</sup> or malicious and sadistic intent for the very purpose of causing harm.”<sup>121</sup>

### 5. *Police Officer Liability Versus Correctional Officer Liability*

In 2003, Professor Hall examined the differences and similarities of police officers and correctional officers, particularly the attitudes and experiences of the two groups toward civil liability.<sup>122</sup> The study focused on whether factors such as occupation, rank, experience, and education affected officers’ attitudes toward and experiences involving civil lawsuit.<sup>123</sup> The study found that substantially more police officers than correctional officers reported being sued civilly.<sup>124</sup>

Overall, Section 1983 is the most commonly used legal device to hold officers responsible for violating individuals’ constitutional liberties.<sup>125</sup> Police and correctional officer liability generally, and Section 1983 liability specifically, have been studied in numerous jurisdictions and at a variety of conceptual levels.<sup>126</sup> After grasping a comprehensive understanding of the Section 1983 literature, the focus of the project turns to the methodology employed in the study.

## III. DATA AND METHODS

With increasing frequency and energy, law reviews are publishing the empirical research of legal scholars and social scientists.<sup>127</sup> An essential

118. See Eschholz, *supra* note 72, at 401 (citing *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958)).

119. See *id.* (citing *Rhodes v. Champan*, 452 U.S. 337, 363 (1981)).

120. See *id.* (citing *Farmer v. Brennan*, 511 U.S. 825, 839-40 (1994)).

121. See *id.* (citing *Hudson v. McMillian*, 503 U.S. 1, 6 (1992)).

122. Hall, *supra* note 14, at 529.

123. *Id.*

124. *Id.* at 535 (reporting that 27% of police officers and 6% of correctional officers stated that they had been sued).

125. Worrall, *supra* note 4, at 28; Means, *supra* note 15, at 1.

126. See Ross, *supra* note 5, at 507-12 (discussing trends in correctional officer civil liability cases); see also Eschholz, *supra* note 72, at 389-405 (studying how perpetrators of sexual violence justify their crimes); Vaughn, *supra* note 8, at 6-16 (reporting the findings of police chiefs’ views regarding legal liabilities); Hanser, *supra* note 72, at 460-74 (exploring the issue of officer liability in prison suicide cases); Hall, *supra* note 14, at 534-39 (providing results of officers’ attitudes and experiences with civil liability).

127. See, e.g., Gregory Mitchell, *Empirical Legal Scholarship as Scientific Dialogue*, 83 N.C. L. REV. 167, 167 (2004) (calling for, among other things, “law reviews to adopt a set of stringent disclosure requirements designed to foster critical review and replication of empirical

element of publishing such research is an explanation of the vital characteristics of the data.<sup>128</sup> In order to enable verification and duplication of the researcher's study, it is necessary to present the critical methods used to obtain the project's results.<sup>129</sup>

#### A. DATA

The main objective of the current project includes identifying the most common legal basis of Section 1983 claims in North Dakota and the agency policies most frequently implicated in the lawsuits. To obtain this objective, content analysis was used.<sup>130</sup> Content analysis is a quantitative research method of systemically analyzing and making inferences from text.<sup>131</sup> The study's population included all "reported" Section 1983 cases involving law enforcement and correctional agencies in North Dakota between January 1, 1997 and December 31, 2007.<sup>132</sup> The unit of analysis

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legal research"); Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1, 1 (2002) (recognizing the then-apparent non-compliance of disclosure rules of many law reviews in publishing empirical analysis and adapting rules of inference to meet the "special needs, theories, and data [of] legal scholarship"); Richard L. Revesz, *A Defense of Empirical Legal Scholarship*, 69 U. CHI. L. REV. 169, 171-80 (2002) (discussing, in part, contemporary methodological advances in empirical legal scholarship); Dennis Patterson, *The Limits of Empiricism: What Facts Tell Us*, 98 MICH. L. REV. 2738, 2738 (2000) (encouraging more legal academic empirical information and stating that "empirical analysis is preferable to many scholarly alternatives now on offer in the law review literature"); Michael Heise, *The Importance of Being Empirical*, 26 PEPP. L. REV. 807, 812 (1999) (noting, approvingly, an increase in publication of empirical legal research amidst the predominantly theoretical and doctrinal scholarship of most law reviews).

128. See Mitchell, *supra* footnote 127, at 200-01 (referencing requirements of the American Psychological Association Publication Manual, which applies to a great deal of social science literature, to include a section wherein the author "disclose[s] sufficient information to allow another investigator to evaluate one's methods and verify one's results").

129. *Id.* at 200.

130. See RUSSELL K. SCHUTT, *INVESTIGATING THE SOCIAL WORLD* 428-29 (5th ed. 2006) (explaining that content analysis is a useful method of conducting research when the material to be studied is in text format). After reading through the text, the relevant material is categorized or coded based on variation and/or relationships among constructs in the text. *Id.* The coding produces numerical data based on observations of certain phenomena pre-determined by the researcher. *Id.* The numerical data aids the researcher in making inferences regarding the subject in question. *Id.* The method by which the current project was coded and analyzed is detailed in Section III.B. See discussion *supra* Section III.B (stating, in part, that the Section 1983 cases were officially reported between January 1997 and December 2007 by the District Court of North Dakota, and each such case was studied independently of the others).

131. *Id.*

132. In this study, "reported" means that the Section 1983 case was adjudicated by the United States District Court of North Dakota and published either in an official judicial reporter (e.g., F. Supp. 2d), and/or through the *Westlaw* and *LexisNexis* databases. A potential weakness in limiting the scope of the project in this way was that cases that were settled, dismissed, or otherwise disposed of without being reported were not captured. However, obtaining Section 1983 cases that were settled or otherwise disposed of without being reported is probably impracticable for this particular project given the existing cost and time limitations.

included forty-five Section 1983 cases reported by the District of North Dakota.

## B. METHODS

The scope of the project was narrowed by defining the time period to cases officially reported between January 1, 1997 and December 31, 2007. A search of all the Section 1983 cases in the United States Eighth Circuit court system (which includes the District of North Dakota) was conducted.<sup>133</sup> The search produced seventy-nine cases. The cases were manually and individually reviewed word by word to ensure that each case was actually: (1) a District of North Dakota case; (2) a 42 U.S.C. Section 1983 case;<sup>134</sup> and (3) only included once in the population.<sup>135</sup> After performing this verification process, forty-five cases fit the qualifications of the population. Because forty-five cases is a reasonable number to review individually, the entire population was studied; sampling was not utilized. In applying content analysis to each case, the data obtained was recorded into an electronic Statistical Package for Social Science (SPSS) file.<sup>136</sup>

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133. In order to complete the research, the *Westlaw* database was used to search for reported cases of Section 1983 claims. The following search terms were employed: "42 U.S.C. Section 1983", "North Dakota", and "police" or "sheriff" or "highway patrol." All terms inside quotations were marked as "required"; this means that the terms must be present within the structure of each case at least one time in order for the case to be considered. The "Terms and Connectors" search function, rather than "Natural Language" function, was utilized because it allowed for the "ordering" of alternative wording. By ordering the search, *Westlaw* was directed to search for cases that contained the terms "police" or "sheriff" or "highway patrol", but only required that one of the three terms actually be present in the case.

134. In word searches, the *Westlaw* software program often selects unrelated cases when numbers (i.e., the year "1983") and terms used for multiple purposes (i.e., "42 U.S.C.") are used. Therefore, the best way to protect against this glitch is to individually and manually verify each case *before* including it in the population.

135. Ensuring that the case was only counted once is important because occasionally the *Westlaw* search included the district court case, as well as the appellate case in a higher court. As a matter of methodical disclosure, when such instances occurred in this project, the district court case was used. The reasoning for doing so was that at the district court all of the plaintiff's claims are considered, whereas a case in a higher court may only consider those claims on appeal. Since this project valued learning from all of the plaintiff's claims, the district court case was used.

136. The coding was as follows: (1) year in which the incident giving rise to the case occurred (values: 1985 to 2007, NA); (2) year in which the case was reported (values: 1997 to 2007, NA); (3) name of defendant-law enforcement agency; (4) gender of plaintiff (values: Male, Female, NA); (5) status of plaintiff (values: Inmate, Subject of a police investigation, Agency employee, Other, NA); (6) total number of constitutional amendments upon which the case was alleged to be grounded (values: 0-6, NA); (7) constitutional amendment(s) cited by plaintiff (values: 0, Amendments 1 to 27, other, NA); (8) total number of constitutional provisions upon which arguments were alleged to be grounded (values: 0-6, NA); (9) constitutional provision(s) cited by plaintiff (values: Free speech, Unreasonable search or seizure, Warrant violation, Double-jeopardy, Assistance of counsel, Excessive bail, Cruel and unusual punishment, Due process, Deliberate indifference, Equal protection, Other, NA, NAP); (10) whether plaintiff was pro se (values: Yes, No, NA); (11) total number of agency policies implicated in plaintiff's complaint (values: 0-6, NA); and (12) agency policies implicated in plaintiff's complaint (values: Medical

#### IV. RESULTS

The results of the project can be categorized into five main areas. The areas consist of agencies involved, common characteristics of plaintiffs, and number of cases reported. The legal authority and arguments used by plaintiffs, as well as the agency policies implicated are also included.

##### A. AGENCIES INVOLVED

Of the ninety-six state and local enforcement agencies studied, Section 1983 claims were filed against officers of eighteen different agencies during January 1, 1997 and December 31, 2007.<sup>137</sup> Employees of the North Dakota Department of Corrections were sued more than any other employees, being named in 44.4% of all reported cases.<sup>138</sup> Even though the cities of Fargo and Bismarck have more residents than Grand Forks, the Grand Forks Police Department was named in more Section 1983 cases than both Fargo and Bismarck combined.<sup>139</sup> In addition, employees of police departments in North Dakota were sued slightly more than those of sheriff's offices.<sup>140</sup>

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care, Access to courts, Discipline and grievance procedures, Administrative liability, Conditions of confinement, Duty to protect, Use of force, Classification, Religious practice, Illegal search or seizure, Administrative segregation, Cruel and Unusual Punishments, Mail, Visitation, Mental health, Facilities, Unlawful detention or arrest, Unlawful stop, Employment policy, Access to attorney, Race discrimination, Other available, NA, NAP). See *infra* Appendix A (listing the North Dakota Law Enforcement and Corrections Agencies).

137. The agencies sued, as well as the corresponding valid percentile of which each agency sued, is as follows: Barnes County Sheriff 2.22%; Bottineau County Sheriff 2.22%; Burleigh County Sheriff 2.22%; Cass County Sheriff 2.22%; Dickinson County Sheriff 2.22%; Fargo Police 6.67%; Grafton Police 2.22%; Grand Forks Police 13.33%; Grand Forks County Sheriff 2.22%; Griggs County Sheriff 2.22%; Jamestown Police 2.22%; Mountrail County Sheriff 2.22%; North Dakota Department of Corrections 44.44%; Rolette County Sheriff 2.22%; Stark County Sheriff 2.22%; Ward County Sheriff 2.22%; Williams County Sheriff 2.22%; and Williston Police 2.22%.

138. Of the forty-five Section 1983 cases reported between January 1, 1997 and December 31, 2007, the North Dakota Department of Corrections was sued twenty times, or in 44.44% of the cases.

139. See United States Census Bureau, *State and County Quickfacts*, 1, <http://quickfacts.census.gov/qfd/states/38/3807200.html> (last visited May 30, 2008) (stating that according to the 2003 U.S. Census data estimate, Bismarck had 56,344 residents, Fargo maintained 91,484 residents, and 48,618 people lived in Grand Forks). In the current study, neither Bismarck Police nor Burleigh County Sheriff was named in any reported Section 1983 actions. Fargo Police, on the other hand, was sued in about 7% of all cases studied, and Grand Forks Police was sued in 15% of all cases. Possible reasons that Fargo Police and Grand Forks Police, with their smaller populations, were named in more claims than Bismarck Police and Burleigh County Sheriff is not conclusively known at this time; in addition, speculation on this point is beyond the scope of the project.

140. Police departments were named as defendants in 29% of all reported Section 1983 cases, as compared to sheriff's offices that were implicated in 27% of cases.

## B. COMMON CHARACTERISTICS OF PLAINTIFFS

An overwhelming majority of Section 1983 plaintiffs in North Dakota were men. Only two of the forty-five cases studied were filed by women.<sup>141</sup> Of the twenty North Dakota Department of Corrections (ND DOCR) cases studied, 100% were filed by men. In other words, although the Department of Corrections does in fact house female inmates, there were no reported Section 1983 cases that were filed by female inmates.

As shown in Figure 1, the plaintiff in each case was categorized as being an inmate, a subject in a police investigation, or an agency employee; the categories were mutually exclusive and exhaustive. Interestingly, plaintiffs were subjects of a police investigation in about 26% of the cases studied. In addition, subjects of police investigations sued officers from only seven North Dakota law enforcement agencies.<sup>142</sup> Of all the plaintiffs studied, approximately 9% were agency employees.<sup>143</sup>

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141. Males were plaintiffs in about 96% of all reported cases, whereas females were named in 4% of cases. Interestingly, the female plaintiffs both sued the Grand Forks Police Department.

142. Subjects of investigation filed Section 1983 claims against officers from the following law enforcement agencies: Grand Forks Police (four times), Bottineau County Sheriff, Mountrail County Sheriff, Stark County Sheriff, Dickinson Police, Jamestown Police, and Fargo Police (twice).

143. Employees of the following agencies sued their supervisors: Grafton Police, Barnes County Sheriff, Grand Forks Police, and Griggs County Sheriff.

**Figure 1**

STATUS OF PLAINTIFF		
STATUS	FREQUENCY	PERCENTAGE (%)
Inmate	29	64.44
Subject of Investigation	12	26.67
Agency Employee	4	8.89
Total	45	100.00

Remarkably, 64% of the cases were filed by inmates. Of these inmate-plaintiffs, about 44% claimed Section 1983 violations against employees of the ND DOCR. The remaining inmate-plaintiffs filed suits against correctional officers employed by county jails.<sup>144</sup> About 93% of the inmate-plaintiffs filed claims without the assistance of legal counsel. Overall, 64% of the cases studied were filed by pro se plaintiffs.<sup>145</sup>

#### C. NUMBER OF CASES REPORTED

An average of 2.2 cases was reported each year from 1997 to 2006.<sup>146</sup> Significantly though, in 2007, twenty-three cases were reported by the court. Of these, eleven of the incidents underlying the lawsuits actually occurred in 2007; the remaining incidents took place in previous years. One of the first possible reasons for such an explosion of reported cases in 2007 could be a large increase in prisoner population. As Figure 2 shows, the prisoner population in North Dakota increased throughout the entire span of the study, with an aggregate increase of about 74%. However, the large number of Section 1983 cases in 2007 cannot be explained solely by an increase in prisoner population because the smallest increase in prisoner population (about 1%) actually occurred in the same year as the significant increase of cases. Instead, some factor outside the scope of this study almost certainly was the primary contributor for the large increase in cases reported in 2007.<sup>147</sup>

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144. The defendant-officers were employed by sheriff's offices in the following counties: Bottineau, Mountrail (twice), Williams, Rolette, Barnes, Ward, Stark, Griggs, and Cass.

145. See BLACK'S LAW DICTIONARY 1258 (8th ed. 2004) (defining pro se plaintiffs as those that represent themselves "in a court proceeding without the assistance of a lawyer").

146. The total number of cases reviewed for the first time from 1997 to 2006 was twenty-two.

147. Given that the 2007 data represents the most recent and available information, the study is not able to determine whether the factor represents a unique occurrence or signals a fundamental change in the nature of the North Dakota prison population.

**Figure 2**

<b>ND DOCR AVERAGE INMATE POPULATION</b>		
<b>Calendar Year</b>	<b>Average Number of State Prisoner Population</b>	<b>Increase in Prisoner Population (%)</b>
1997	819	15.80
1998	902	10.13
1999	931	3.22
2000	1016	9.13
2001	1099	8.17
2002	1160	5.55
2003	1198	3.28
2004	1299	8.43
2005	1373	5.70
2006	1409	2.62
2007	1429	1.42

#### D. LEGAL AUTHORITY AND ARGUMENTS EMPLOYED BY PLAINTIFFS

Importantly, the study considered the constitutional authority and accompanying arguments employed by each of the forty-five Section 1983 plaintiffs. Although the entire findings are shown in Figure 3, the most notable include the fact that a Fourteenth Amendment violation was alleged in 42% of the cases. The Eighth Amendment was cited 35% of the time. In addition, the plaintiff made the fatal error of not making any constitutional connection to his Section 1983 claim in 5% of the cases; all of these cases were initiated by pro se inmate-plaintiffs.<sup>148</sup>

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148. Worthy of note is the fact that the “legal authority” categories were not considered mutually exclusive, although they were exhaustive. Meaning, if a plaintiff cited the Eighth *and* Fourteenth Amendments, the plaintiff was recorded as having implicated both authorities. As shown in Figure 3, there were seventy-six constitutional amendments cited to in forty-five cases. In addition, although the scope of the study was open to all amendments cited by plaintiffs, only those amendments actually cited at least once are listed in Figure 3.

**Figure 3**

<b>CONSTITUTIONAL AMENDMENTS CITED BY NORTH DAKOTA SECTION 1983 PLAINTIFFS</b>		
<b>AMENDMENT</b>	<b>FREQUENCY</b>	<b>PERCENTAGE (%)</b>
I	12	15.79
IV	8	10.53
VI	4	5.26
VIII	16	21.05
XIV	32	42.11
None	4	5.26
<b>TOTAL</b>	<b>76</b>	<b>100.00</b>

In considering the actual arguments and constitutional clauses used, the study found that plaintiffs alleged some type of due process violation in almost 32% of the cases. Deliberate indifference was argued in approximately 19% of cases. The other legal arguments employed by Section 1983 plaintiffs are detailed in Figure 4.<sup>149</sup>

In 52% of the cases, the plaintiff cited more than one constitutional amendment violation. But, in only 13% of the cases did the plaintiff assert more than two constitutional violation claims. In almost 57% of all cases, the plaintiff employed more than one argument to support his constitutional violation claim(s). In about 23% of the cases, more than two arguments were used to support the claim(s). Five arguments were the most any plaintiff ever used to support his claim(s).

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149. Similar to the structure of the legal authority categories, the categories of constitutional provisions were not considered mutually exclusive. This means that if a plaintiff employed a free speech argument, as well as a due process argument, the plaintiff was recorded as having used both arguments. As such, there were eighty-five constitutional provisions or arguments made in forty-five Section 1983 cases. In addition to those legal arguments listed in Figure 4, the study looked for plaintiffs to cite double jeopardy, self-incrimination, and excessive bail arguments. Because these three arguments were not employed at least once in the population of cases, they are not listed in Figure 4.

**Figure 4**

<b>CONSTITUTIONAL PROVISION EMPLOYED BY NORTH DAKOTA SECTION 1983 PLAINTIFFS</b>		
<b>PROVISION/ ARGUMENT</b>	<b>NUMBER OF INSTANCES</b>	<b>PERCENTAGE (%)</b>
Free Speech	7	8.24
Unreasonable Search/Seizure	5	5.88
Warrant Violation	2	2.35
Assist. Of Counsel	2	2.35
Cruel & Usual Punishment	3	3.53
Due Process	27	31.77
Deliberate Indifference	16	18.82
Equal Protection	8	9.41
Other	11	12.94
None	4	4.71
<b>TOTAL</b>	<b>85</b>	<b>100.00</b>

#### E. POLICIES IMPLICATED

In the most substantively rich portion of the findings, the agency policies implicated in each case of the population were studied. Figure 5 provides the statistical details of the findings, but of particular note is the finding that the policy most frequently cited was that of providing medical care to incarcerated persons. In addition, the discipline and grievance procedures of agencies were frequently implicated. Likewise, plaintiffs were especially concerned with North Dakota agencies' use of force policies. With specific regard to correctional agencies, plaintiffs commonly filed Section 1983 claims questioning agencies' administrative segregation and mail privileges policies.

**Figure 5**

<b>NORTH DAKOTA LAW ENFORCEMENT &amp; CORRECTIONS AGENCY POLICIES IMPLICATED IN SECTION 1983 CLAIMS</b>					
	Number of Policies Implicated	Percentage (%)	ND DOCR Cases	ND Sheriff Office Cases	ND Police Department Cases
Medical Care	9	10.58	8	1	0
Discipline/Grievance Proceedings	7	8.24	7	0	0
Duty to Protect	5	5.88	3	1	1
Unlawful Search & Seizure	5	5.88	2	2	1
Mail	5	5.88	4	1	0
Administrative Segregation	5	5.88	5	0	0
Unlawful Detainment/Arrest	4	4.71	0	2	2
Employment Policy	4	4.71	0	2	2
Conditions of Confinement	4	4.71	3	0	1
Access to Courts	3	3.53	1	2	0
Mental Health	3	3.53	1	2	0
Use of Force	3	3.53	1	0	2
Religious Practice	2	2.35	2	0	0
Access to Attorney	2	2.35	0	2	0
Race Discrimination	2	2.35	1	1	0
Cruel & Unusual Punishment	1	1.18	1	0	0
Visitation	1	1.18	0	1	0
Administrative Liability	1	1.18	1	0	0
Other Available	19	22.35	7	5	7
Not Available	0	0	0	0	0
<b>Total</b>	85	100.00	47 (55.29)	22 (25.88)	16 (18.82)

We can draw several preliminary conclusions from the data presented. The majority of Section 1983 claims in North Dakota are filed by inmate-plaintiffs. Although there are ninety-six state and local law enforcement/correctional agencies in North Dakota, only eighteen were named in Section 1983 lawsuits over the last eleven years. The number of reported Section 1983 lawsuits against North Dakota law enforcement and corrections agencies dramatically increased in 2007. The most commonly cited constitutional claims were Fourteenth Amendment due process and Eighth Amendment cruel and unusual punishment violations. The arguments most frequently used to support the plaintiffs' claims included due process, deliberate indifference, and equal protection arguments. The group of policies implicated most commonly involved medical care for inmates. Agency policies governing discipline and grievances procedures, including those intended for both inmates and agency employees, were also frequently questioned.

## V. DISCUSSION

The significance of the results of the project is best understood when properly placed in the context of three issues. First, is Section 1983 overly burdensome on law enforcement and correctional agencies in North Dakota? Second, how do North Dakota's Section 1983 statistical trends compare to those of other jurisdictions? And third, what can North Dakota agencies do to improve and strengthen their administrative policies?

### A. IS SECTION 1983 BURDENSOME TO NORTH DAKOTA AGENCIES?

The first issue to consider is the extent to which Section 1983 burdens North Dakota agencies. In 1995, Congress enacted the Prison Litigation Reform Act (PLRA) to reduce the high number of frivolous and meritless lawsuits filed by prisoners, of which Section 1983 may be included.<sup>150</sup> In examining other jurisdictions, Ross's study noted dramatic increases in Section 1983 lawsuits (sometimes as much as doubling previous increases) and correlated a significant portion of the increase to the ever-ballooning number of federal prisoners.<sup>151</sup> Such dramatic increases in a relatively short period of time represent at least one way that Section 1983 claims burden

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150. 42 U.S.C. § 1997e (1996); *Pipes v. North Dakota*, No. 1:07-CV-00067, 2007 WL 4661655, \*1 (D.N.D. Dec. 10, 2007)

151. Ross, *supra* note 5, at 507.

some law enforcement and correctional agencies across the United States.<sup>152</sup>

In North Dakota, the number of reported Section 1983 lawsuits remained relatively constant from 1997 to 2006, with an average of 2.2 reported cases per year.<sup>153</sup> In 2007 however, the number sky-rocketed to twenty-two reported cases in one year.<sup>154</sup> North Dakota's Section 1983 caseload from 1997 to 2006 appears to be quite modest compared to the overall load experienced in Ross's study of all federal judicial districts.<sup>155</sup> However, the number of Section 1983 cases reported in 2007 increased more than 900% over the average number of cases reported in the previous ten years. This significant increase is important evidence that the Section 1983 caseload may be a heavy burden on law enforcement and correctional agencies in North Dakota.

Evaluating the burden of Section 1983 cases in North Dakota can also occur by determining the number of reported cases filed by pro se plaintiffs. In Ross's study, about 90% of the Section 1983 claims were filed by pro se plaintiffs.<sup>156</sup> In North Dakota, about two-thirds of the plaintiffs filed without the assistance of counsel.

In the Eighth Circuit, of which North Dakota is part, courts must liberally construe complaints filed by pro se inmates and must ascertain whether the complaint may provide relief "on any possible theory."<sup>157</sup> This, in essence, amounts "to a less stringent standard than what would be required of attorneys."<sup>158</sup> On a practical level, the mandate significantly increases the amount of time the court must spend in reviewing and deciphering what many times are ill-pled motions of pro se plaintiffs.<sup>159</sup> Therefore, the strain inherent in pro se filings in North Dakota is

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152. See Vaughn, *supra* note 8, at 3 (concurring that some law enforcement officers report they are burdened by various forms of civil liability).

153. This statistic stands true even though the average inmate population in North Dakota increased by about 72% over the same time period.

154. Twenty-two Section 1983 cases were reported from 1997 to 2006, as compared to twenty-three cases reported in 2007 alone.

155. See Ross, *supra* note 5, at 507-09.

156. *Id.* at 509.

157. *Haley v. Dormire*, 845 F.2d 1488, 1490 (8th Cir. 1988); *Bramlet v. Wilson*, 495 F.2d 714, 716 (8th Cir. 1974).

158. *Pipes v. North Dakota*, No. 1:07-CV-00067, 2007 WL 4661655, \*2 (D.N.D. Dec. 10, 2007) (citing *Erickson v. Pardus*, 127 S.Ct. 2197, 2200 (2007)).

159. See, e.g., *id.* at \*1 ("The complaint filed by Pipes is approximately forty pages in length and contains several narratives in which Pipes attempts to describe his claims. The lack of reference to any particular federal constitutional or statutory right, however, makes it difficult to discern exactly what his claims are.").

noteworthy (64% of plaintiffs filed pro se), but comparatively speaking, are not as heavy as the burden placed on federal courts at large.<sup>160</sup>

#### B. HOW DO THE SECTION 1983 STATISTICAL TRENDS OF NORTH DAKOTA COMPARE?

In order for law enforcement and correctional agencies in North Dakota to more fully familiarize themselves with Section 1983 claims and to accurately situate themselves among other Section 1983 jurisdictions, this study discusses statistical data related to Section 1983 cases. The data can be categorized in three ways. First, in Hall's study of various jurisdictions, substantially more law enforcement officers were sued than correctional officers.<sup>161</sup> In North Dakota, the exact opposite phenomenon exists—correctional officers were sued more than law enforcement officers.<sup>162</sup>

Second, in Vaughn's study of police chiefs in Texas, about one-fourth of the cases maintained allegations of excessive use of force violations.<sup>163</sup> Officers in North Dakota agencies fared considerably better in that only about 7% of the cases alleged excessive use of force violations. Similarly, police chiefs in Texas reported that claims of false arrest/imprisonment/detention accounted for 19% of the civil lawsuits.<sup>164</sup> In North Dakota, the same alleged violations existed in only half as many cases. In addition, the percentage of unlawful search or seizure allegations in North Dakota cases was about the same (11%) as the unlawful search or seizure allegations in Texas (10%).<sup>165</sup>

Third, some of the agency policies implicated in Ross's study of all federal judicial circuits are the same as those implicated in the North Dakota cases.<sup>166</sup> Several statistical and substantive tools exist for determining similarity and difference between two groups of data.<sup>167</sup> One tool, the "t-test," examines the statistical difference between means, or averages,

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160. See Ross, *supra* note 5, at 509 (reporting that 92% of the Section 1983 claims were filed by plaintiffs not represented by counsel).

161. Hall, *supra* note 14, at 535.

162. In the present study, inmates sued corrections officials in 29 of 45 cases. In the remaining sixteen cases, law enforcement officials were sued by subjects of investigation (12 of 45), and agency employees (4 of 45).

163. Vaughn, *supra* note 8, at 8.

164. *Id.*

165. *Id.*

166. See Ross, *supra* note 5, at 510 (showing, for example, that medical care policies were implicated 362 times, which is equivalent to 11% of the filings); see also *supra* Figure 5 (illustrating that medical care policies were implicated in about 11% of the North Dakota cases).

167. EVAN M. BERMAN, *ESSENTIAL STATISTICS FOR PUBLIC MANAGER AND POLICY ANALYSTS* 180 (2d ed. 2007).

of two variables.<sup>168</sup> Translated into layman's terms, the average number of cases that implicate medical care policies in the North Dakota study were compared against the average number of cases that implicate medical care policies in the Ross study. If the comparison was within a statistically approved range of acceptance, the relationship between the two variables was deemed "significant."<sup>169</sup>

Here, the North Dakota project found that in almost all policies there was no statistical relationship between the two studies' findings (see Appendix C).<sup>170</sup> However, two other factors suggest that similarity between the two studies does exist.<sup>171</sup> First, the studies are similar in that they both reported an increase in the average prisoner population over the span of their respective time periods.<sup>172</sup> In addition, the cases in both studies employed the same constitutional amendments and provisions (see Figures 3 and 4).<sup>173</sup>

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168. *Id.* at 180-81.

169. *See id.* at 4-6, 162-68 (discussing various techniques for testing similarity and difference between two groups of data).

170. The null hypothesis is that there is no statistical relationship between the North Dakota policies implicated in Section 1983 claims and those policies implicated in other American jurisdictions. The null hypothesis was tested at a confidence level of 95%. Appendix C provides the numerical data used to calculate the t-test. For example, with regard to the policy of medical care to inmates, the test value is 1.443. Because 1.443 is not greater than the critical value of 1.96, the null hypothesis cannot be rejected. Similarly, the test value for disciplinary and grievance policies (1.328) is less than the critical value (1.96), so the null cannot be rejected. Practically speaking, this means that according to the t-test difference of means, we cannot reject the hypothesis that there is not a relationship between the policies implicated in Section 1983 claims in North Dakota and policies implicated in Section 1983 claims in other jurisdictions. One possible explanation for the results of the low t-test is that the numbers of cases in which various agency policies in North Dakota are implicated are not sufficiently adequate to receive a higher test value. For instance, as shown in Appendix C, most of the cells in the North Dakota study contain numbers such as three, five, and seven. In this case, low values in the cells likely contribute to a smaller t-test value. In addition, the current study includes more information than Ross provided with regard to all of the policies implicated in any given case. This means that although Ross studied considerably more cases than the present project, Ross analyzed the case based exclusively on what he considered to be the primary argument of the case. Email from Darrel L. Ross, Department of Law Enforcement & Justice Administration Chair, Western Illinois University, to Jared W. Rigby, Author (Mar. 21, 2008, 13:03:16 CDT) (on file with author). In the present study, all policies and arguments reported by the court were included in the analysis. Therefore, a t-test involving Ross's study which only included one of the potentially several policies may have influenced a slightly lower value than would have otherwise existed.

171. *Compare* Ross, *supra* note 5, at 508 (discussing the inmate level in the federal system) *with supra* Figure 2 (reporting on the North Dakota inmate level); *compare also* Ross, *supra* note 5, at 507 (discussing the number of constitutional amendments cited in most jurisdictions) *with supra* Figure 2 (reporting the constitutional amendments cited in North Dakota cases).

172. *Compare* Ross, *supra* note 5, at 508 (illustrating that, with the exception of one year, the number of inmates in the federal prison system increased from 1970 to 1994) *with supra* Figure 2 (showing that the number of inmates at the ND DOC increased from 1997 to 2007).

173. *Compare* Ross, *supra* note 5, at 507 (stating, for example, that inmates in most jurisdictions commonly employ more than one constitutional amendment in Section 1983 cases) *with*

Overall, the statistical data discussed above enables North Dakota agencies and officers to identify their Section 1983 situation relative to their counterparts in other states. In events such as an increase in prisoner population, the employment of constitutional amendments and provisions, and an increase in Section 1983 cases, North Dakota appears to be similar to most jurisdictions. However, in terms of the policies implicated, North Dakota may exhibit a statistically different experience than most other jurisdictions.

### C. RECOMMENDATIONS FOR STRENGTHENING NORTH DAKOTA POLICIES

Drawing upon the findings of the current study, three recommendations exist for North Dakota law enforcement and correctional agencies. First, agencies should review and update their existing policies. Second, individual agencies or the state should conduct a study that focuses on the decisions and behavior of those that perpetuate the policy violations.<sup>174</sup> Third, agencies should provide regular training and educational opportunities wherein employees learn about issues regarding agency and personal liability.<sup>175</sup>

#### 1. *Review and Update Policies*

The first step North Dakota law enforcement and correctional agencies should take is to review and update their respective policies with an eye toward further protecting individuals' constitutional rights and liberties.<sup>176</sup> This recommendation is not given with the assumption that the policy, as opposed to some other factor such as improper action taken by officers, was the sole and direct cause of the Section 1983 claim. Rather, in recommending policy reviews, this study merely intends to rule out or improve agency policy before tackling more complicated issues such as officer training. Generally speaking, agencies ought to begin their review with medical care and disciplinary/grievance procedures because these policies were implicated in Section 1983 cases most often. After this is accomplished, agencies might consider focusing their attention on policies that govern duty to

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*supra* Part IV.D (reporting, for example, that plaintiffs in North Dakota cited more than one constitutional amendment violation in 52% of the cases).

174. *See* Ross, *supra* note 5, at 513 (agreeing that “[a] systematic review and development of policies and procedures is necessary to keep personnel performing their job duties commensurate with the law”).

175. *See id.* (recognizing that new officers typically receive adequate training to start their positions, but that regular in-service training “frequently suffers”).

176. *See id.* (concurring in the need to protect individuals' constitutional rights).

protect, search and seizure, and where applicable, their administrative segregation, and inmate mail issues.

## 2. *Study Those That Actually Violate Section 1983*

Second, under conditions that are feasible to North Dakota agencies, further studies of Section 1983 claims should be conducted.<sup>177</sup> Whereas the current study focused on the individuals that initiated the Section 1983 claims (the plaintiffs), additional agency-led studies ought to concentrate on characteristics that are similar among those that actually violate the agency policies (the defendant-officers). By doing this, agency administrators will increase their understanding of the environment, circumstances, and rationales of defendant-officers' actions and behavior.<sup>178</sup> In turn, an understanding from the perspective of the errant officers will assist administrators in reducing agency liability and responding through training tailored to the needs of individual agencies.<sup>179</sup>

## 3. *Regularly Train and Educate Employees*

The third recommendation is that agencies consider establishing a regular training time each month wherein specific policies are presented and discussed.<sup>180</sup> An important element to training officers in Section 1983 issues is to include an education component in the training. When accomplished properly, the education component will focus on obtaining a broad perspective of the Section 1983 issue, whereas traditional training often consists of essentially listing the "dos" and "don'ts" associated with avoiding agency and personal liability. The first objective of an education component in the Section 1983 context is to show employees why certain speech and conduct are not legal and appropriate. Applied to officers, for instance, this may mean that referring to people of color using derogatory terms may lead to or be per se evidence of treating others unequally.<sup>181</sup>

The second objective is to convince the trainees that language and behavior should conform to the principles communicated in the training portion because it is in their best personal interest to treat others fairly,

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177. *See id.* at 513-14 (calling for correctional agencies to examine their individual systems).

178. *See* Eschholz, *supra* note 72, at 401 (agreeing that a study of the circumstances underlying agency and officer liability ought to be conducted).

179. *See* Vaughn, *supra* note 8, at 22-23 (concurring that Section 1983 experiences differ across jurisdictions and that the needs of various jurisdictions, including training, may also vary depending on the jurisdiction).

180. *See id.* at 23 (agreeing that regular and meaningful training reduces liability).

181. *See id.* (concurring that officers that speak as though they do not treat people fairly and equally should be carefully observed by supervisors because those officers likely do treat individuals unfairly and unequally).

equally, and with care.<sup>182</sup> To officers, this may mean that policy violations lead to disciplinary action, whereas favorable reviews offered by clients, co-workers, and supervisors lead to organizational rewards. In addition, on a personal level, Section 1983 allegations may lead to some taint or loss of favorable reputation for officers named in Section 1983 actions.

In short, North Dakota law enforcement and correctional agencies ought to strengthen their policies by conducting reviews and updates with the intention of protecting individuals' constitutional rights and liberties. In addition, agencies should, where feasible, study Section 1983 cases by concentrating on characteristics that are similar among those that actually violate the agency policies. Furthermore, agencies need to establish regular training wherein agency policies are discussed and employees are educated as to how compliance with policy benefits others and themselves.

## VI. CONCLUSION

The Section 1983 cases in North Dakota and the majority of other jurisdictions intersect and diverge depending on the particular issue considered. In this study of the most recent eleven years, the constitutional amendments and provisions employed in reported North Dakota cases are similar to those used in other jurisdictions throughout the United States. In addition, the agency policies implicated in North Dakota cases are, in several ways, similar to those challenged in other jurisdictions.

Furthermore, like most other jurisdictions, the inmate population in North Dakota increased over the span of the study. And, a large number of inmate-plaintiffs in both studies filed without the assistance of counsel. Unlike some jurisdictions, however, plaintiffs of reported Section 1983 cases in North Dakota more frequently sued correctional officers than law enforcement officers. Additionally, the plaintiffs are most frequently inmates incarcerated with the North Dakota Department of Corrections and Rehabilitation or one of the jails in North Dakota.

Generally speaking, the present project found that from 1997 to 2007 the agency policies most commonly implicated in Section 1983 cases in North Dakota included those dealing with medical care to inmates and disciplinary and grievance procedures for inmates and employees. North Dakota agencies and plaintiffs alike will be better served as the aforementioned agency policies are reevaluated and, where applicable, updated. Either the state or individual agencies should consider conducting studies wherein the characteristics common to those that actually violate their

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182. *See id.* at 23 (agreeing that treating citizens fairly reduces lawsuits).

policies are examined. Regular training that incorporates an education component will more likely convince officers to tailor their communication, actions, and decisions to constitutional mandates.

Overall, this study is important because it identifies Section 1983 issues that North Dakota law enforcement and correctional agencies and officers have recently been accused of violating. The study also provides agencies with data and recommendations that will enable agencies and officers to avoid Section 1983 violations. Most importantly, the data and recommendations will allow agencies and officers to conduct their essential missions of public service while protecting individuals' fundamental constitutional rights and liberties.

**APPENDIX A**  
**NORTH DAKOTA LAW ENFORCEMENT &**  
**CORRECTIONS AGENCIES**

North Dakota Department of Corrections	Logan County Sheriff's Office
North Dakota Highway Patrol	Napoleon Police Department
Adams County Sheriff's Office	McHenry County Sheriff's Office
Barnes County Sheriff's Office	McIntosh County Sheriff's Office
Valley City Police Department	Wishek Police Department
Benson County Sheriff's Office	McKenzie County Sheriff's Office
Billings County Sheriff's Office	Watford City Police Department
Bottineau County Sheriff's Office	McLean County Sheriff's Office
Bowman County Sheriff's Office	Mercer County Sheriff's Office
Bowman Police Department	Beulah Police Department
Burke County Sheriff's Office	Hazen Police Department
Burleigh County Sheriff's Office	Morton County Sheriff's Office
Bismarck Police Department	Mandan Police Department
Lincoln Police Department	Mountrail County Sheriff's Office
Cass County Sheriff's Office	Nelson County Sheriff's Office
Fargo Police Department	Oliver County Sheriff's Office
West Fargo Police Department	Pembina County Sheriff's Office
Cavalier County Sheriff's Office	Cavalier Police Department
Dickey County Sheriff's Office	Pierce County Sheriff's Office
Oakes Police Department	Rugby Police Department
Divide County Sheriff's Office	Ramsey County Sheriff's Office
Crosby Police Department	Devils Lake Police Department
Dunn County Sheriff's Office	Ransom County Sheriff's Office
Eddy County Sheriff's Office	Lisbon Police Department
Emmons County Sheriff's Office	Renville County Sheriff's Office
Linton Police Department	Richland County Sheriff's Office
Foster County Sheriff's Office	Wahpeton Police Department
Carrington Police Department	Rolette County Sheriff's Office
Golden Valley County Sheriff's Office	Rolla Police Department
Grand Forks County Sheriff's Office	Sergeant County Sheriff's Office
Emerado Police Department	Sheridan County Sheriff's Office
Grand Forks Police Department	Sioux County Sheriff's Office
Larimore Police Department	Slope County Sheriff's Office
Northwood Police Department	Stark County Sheriff's Office
Thompson Police Department	Dickinson Police Department
Grant County Sheriff's Office	Steele County Sheriff's Office
Griggs County Sheriff's Office	Stutsman County Sheriff's Office
Hettinger County Sheriff's Office	Jamestown Police Department
Kidder County Sheriff's Office	Towner County Sheriff's Office
Steele Police Department	Trail County Sheriff's Office
LaMoure County Sheriff's Office	Mayville Police Department
	Portland Police Department
	Hillsboro Police Department
	Walsh County Sheriff's Office

Grafton Police Department  
Ward County Sheriff's Office  
Minot Police Department  
Wells County Sheriff's Office  
Harvey Police Department  
Fessenden Police Department  
Williams County Sheriff's Office

Williston Police Department  
NDSCS Police Department  
NDSU Police Department  
UND Police Department  
Other  
NA

**APPENDIX B**  
**LIST OF POPULATION (OF CASES)**

1. Poolman v. City of Grafton, N.D., 487 F.3d 1098 (8th Cir. 2007).
2. Dornheim v. Sholes, 430 F.3d 919 (8th Cir. 2005).
3. Blades v. Schuetzle, 302 F.3d 801 (8th Cir. 2002).
4. Burke v. North Dakota Dept. of Corrs. and Rehab., 294 F.3d 1043 (8th Cir. 2002).
5. Hulse v. Hall, 205 F.3d 1346 (8th Cir. 1999).
6. Pipes v. North Dakota, No. 1:07-CV-00067, 2007 WL 4661655 (D.N.D. Dec. 10, 2007). (Against Bottineau County Sheriff).
7. Pipes v. North Dakota, No. 1:07-CV-00067, 2007 WL 4661655 (D.N.D. Dec. 10, 2007). (Against North Dakota Department of Corrections).
8. Steinbach v. Branson, No. 1:05-CV-101, 2007 WL 2985571 (D.N.D. Oct. 9, 2007).
9. Johnson v. Welte, No. CIV. 3:06-CV-89, 2007 WL 2790666 (D.N.D. Sept. 24, 2007). (Against Grand Forks City Police, before incarceration).
10. Johnson v. Welte, No. CIV. 3:06-CV-89, 2007 WL 2790666 (D.N.D. Sept. 24, 2007). (Against Grand Forks City Police, during incarceration).
11. Moore v. Bertsch, No. 105-CV-098, 2007 WL 2410346 (D.N.D. Aug. 21, 2007).
12. Tweed v. Schuetzle, No. 1:06-CV-032, 2007 WL 2050782 (D.N.D. July 12, 2007). (Plaintiff was Tweed).
13. Tweed v. Schuetzle, No. 1:06-CV-032, 2007 WL 2050782 (D.N.D. July 12, 2007). (Plaintiff was Moses).
14. Wedemeyer v. City of Williston unknown transport officers, No. 107-CV-033, 2007 WL 1855050 (D.N.D. June 26, 2007). (Against Williston City Police).
15. Wedemeyer v. City of Williston unknown transport officers, No. 107-CV-033, 2007 WL 1855050 (D.N.D. June 26, 2007). (Against Williams County Sheriff).
16. Wedemeyer v. City of Williston unknown transport officers, No. 107-CV-033, 2007 WL 1855050 (D.N.D. June 26, 2007). (Against North Dakota Department of Corrections).
17. Cody v. White, No. 3:06-CV-18, 2007 WL 1726583 (D.N.D. June 13, 2007).
18. Odom v. Brutger Equities, Inc., No. 1:06-CV-038, 2007 WL 1611923 (D.N.D. June 01, 2007).
19. Clifford v. Mueller, No. 3:07-CV-44, 2007 WL 1521043 (D.N.D. May 22, 2007).
20. Burke v. North Dakota Dept. of Corrs. and Rehab., No. 1:07 CV 004, 2007 WL 1456217 (D.N.D. May 16, 2007).
21. Moore v. Schuetzle, No. 1:06-CV-079, 2006 WL 3612857 (D.N.D. Nov. 20, 2006). (Against North Dakota Department of Corrections)
22. Moore v. Schuetzle, No. 1:06-CV-079, 2006 WL 3612857 (D.N.D. Nov. 20, 2006). (Against Fargo City Police).
23. Mora v. North Dakota, No. 1:07-CV-023, 2007 WL 1147060 (D.N.D. Mar. 29, 2007).
24. Garcia v. Schull, No. 2:05-CV-50, 2007 WL 295614 (D.N.D. Jan. 29, 2007).

- (Against Grand Forks City Police).
25. *Garcia v. Schull*, No. 2:05-CV-50, 2007 WL 295614 (D.N.D. Jan. 29, 2007).  
(Against Grand Forks County Sheriff).
26. *Hart v. Bertsch*, No. 1:06-CV-080, 2006 WL 3544393 (D.N.D. Nov. 2, 2006).
27. *Kunze v. Bertsch*, No. 1:05-CV-104, 2006 WL 267150 (D.N.D. Jan. 4, 2006).
28. *Shape v. Barnes County*, 396 F. Supp. 2d 1067 (D.N.D. Oct. 14, 2005).
29. *Brown ex rel. Indigenous Inmates at N.D. State Prison v. Schuetzle*, 368 F.Supp.2d 1009 (D.N.D. May 4, 2005).
30. *Harvey v. County of Ward*, 352 F.Supp.2d 1003 (D.N.D. 2005).
31. *Kunze v. Rauser*, 332 F.Supp.2d 1269 (D.N.D. 2004).
32. *Moore v. Bachmeier*, No. A1-04-38, 2004 WL 1167380 (D.N.D. May 25, 2004).
33. *Damron v. North Dakota Com'r of Corrs.*, 299 F.Supp.2d 970 (D.N.D. 2004).
34. *Daniels v. Anderson*, No. A1-02-125, 2003 WL 21704396 (D.N.D. July 15, 2003).  
(Against Stark County Sheriff).
35. *Daniels v. Anderson*, No. A1-02-125, 2003 WL 21704396 (D.N.D. July 15, 2003).  
(Against Dickinson City Police).
36. *Shirley v. Dietz*, No. A3-99-120, 2000 WL 33340305 (D.N.D. Nov. 7, 2000).
37. *Westfall v. City of Grand Forks*, No. A2-99-2, 2000 WL 33339627  
(D.N.D. Aug. 2, 2000).
38. *Hendrickson v. Griggs County ex rel. Bd. of County Comm'r*, No. A3-99-36, 2000  
WL 33339621 (D.N.D. April 18, 2000).
39. *Schneeweis v. City of Grand Forks*, No. A3-98-76, 1999 WL 33279853  
(D.N.D. July 15, 1999).
40. *Burke v. Meyers*, No. A3-97-99, 1998 WL 1780695 (D.N.D. July 27, 1998).
41. *Copper v. City of Fargo*, No. A3-93-130, 1998 WL 1780672  
(D.N.D. Mar. 31, 1998).
42. *Veneklase v. City of Fargo*, No. A3-93-156, 1998 WL 1780688  
(D.N.D. Mar. 31, 1998).
43. *Pipes v. North Dakota*, No. 1:07-CV-00067, 2007 WL 4661655  
(D.N.D. Dec. 10, 2007). (Against Mountrail County Sheriff).
44. *Pipes v. North Dakota*, No. 1:07-CV-00067, 2007 WL 4661655  
(D.N.D. December 10, 2007). (Against North Dakota Department of Corrections).
45. *Billings v. North Dakota State Penitentiary*, No. 1:07-CV-066, 2007 WL 4380056  
(D.N.D. Oct. 26, 2007).

## APPENDIX C

COMPARISON OF AGENCY POLICIES IMPLICATED IN SECTION 1983 CLAIMS (CURRENT STUDY VERSUS ROSS STUDY)							
	Policies Implicated in ND Cases (% of total)	Policies Implicated in Ross's Project (% of total)	ND's Mean & Mean Diff Between Ross & ND (%)	ND DOCR Cases	Ross's Study of Prison Cases	ND Jail Cases (% of total)	Ross's Study of Jail Cases (% of total)
Medical Care	9 (20.0)	362 (11.3)	$x=0.20$ $md=0.087$ $t=1.443$	8 (8.89)	212 (6.61)	1 (1.11)	150 (4.68)
Access to Courts	3 (6.7)	337 (11.0)	$x=0.07$ $md=-0.043$ $t=-1.152$	1 (1.11)	256 (7.98)	2 (2.22)	81 (2.52)
Disciplinary/ Grievance Proceedings	7 (15.6)	267 (8.3)	$x=0.16$ $md=0.073$ $t=1.328$	7 (7.78)	199 (6.20)	0	68 (2.12)
Administrative Liability	1 (2.2)	241 (7.5)	$x=0.02$ $md=-0.053$ $t=-2.375$	1 (1.11)	121 (3.77)	0	120 (3.74)
Conditions of Confinement	4 (8.9)	236 (7.4)	$x=0.09$ $md=0.015$ $t=0.347$	3 (3.33)	136 (4.24)	0	100 (3.12)
Duty to Protect	5 (11.1)	218 (6.8)	$x=0.11$ $md=0.043$ $t=0.910$	3 (3.33)	118 (3.68)	1 (1.11)	100 (3.12)
Use of Force	3 (6.7)	215 (6.7)	$x=0.07$ $md=0$ $t=-0.009$	1 (1.11)	112 (3.49)	0	103 (3.21)
Classification	0	185 (5.8)	—	0	96 (2.99)	0	89 (2.77)
Religious Practice	2 (4.44)	177 (5.5)	$x=0.04$ $md=-0.011$ $t=-0.340$	2 (2.22)	138 (4.30)	0	39 (1.21)
Unlawful Search & Seizure	5 (11.1)	171 (5.2)	$x=0.11$ $md=0.059$ $t=1.248$	2 (2.22)	82 (2.55)	0	89 (2.77)
Administrative Segregation	5 (11.1)	152 (4.7)	$x=0.11$ $md=0.064$ $t=1.353$	5 (5.56)	111 (3.46)	0	41 (1.27)
Cruel & Unusual Punishment	1 (1.11)	142 (4.3)	$x=0.02$ $md=-0.021$ $t=-0.935$	1 (1.11)	102 (3.18)	0	40 (1.24)
Mail	5 (11.1)	139 (4.2)	$x=0.11$ $md=0.069$ $t=1.459$	4 (4.44)	90 (2.80)	1 (1.11)	49 (1.52)
Visitation	1 (2.2)	0	$x=0.02$ —	0	0	1 (1.11)	0
Speech	0	137 (4.2)	—	0	91 (2.83)	0	46 (1.43)
Mental Health	3 (6.7)	125 (3.9)	$x=0.07$ $md=0.025$ $t=0.656$	1 (1.11)	59 (1.84)	2 (2.22)	66 (2.05)
Facilities	0	101 (3.2)	—	0	41 (1.27)	0	60 (1.87)
Unlawful Detainment/Arrest	4 (8.9)	0	$x=0.09$ —	0	0	0	0

Employment Policy	4 (8.9)	0	x=0.09 —	0	0	0	0
Access to Attorney	2 (4.44)	0	x=0.04 —	0	0	2 (2.22)	0
Race Discrimination	2 (4.44)	0	x=0.04 —	1 (1.11)	0	1 (1.11)	0
Other Available	19 (42.2)	0	x=0.04 —	7	0	6	0
Not Available	0 (0)	0	—	2	0	4	0
Total Policies Implemented	85	3205 (100.00)	—				
Total Cases Studied	45 (100.00)	3205 (100.00)	—	49 (54.43%)	1864 (58%)	21 (23.32%)	1341 (42%)