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Litigation Landmines: Obtaining Attorneys Fees In Conditions Of Confinement. Litigation After Bloomberg v. Christina A

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LITIGATION LANDMINES: OBTAINING ATTORNEYS FEES IN CONDITIONS OF CONFINEMENT LITIGATION AFTER *BLOOMBERG v. CHRISTINA A.*

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I. INTRODUCTION

Abuse of children in state institutions is a longstanding and notorious problem.[1] Advocates for children have successfully brought federal civil rights litigation over the past thirty years to protect the lives, safety, and rights of children in jails,[2] juvenile detention facilities,[3] and state corrections institutions.[4] In recent years, however, such litigation has become more difficult as a result of enactment of the Prison Litigation Reform Act (PLRA)[5] and an array of United States Supreme Court decisions. In a number of decisions over the past two decades, the Supreme Court has significantly restricted the rights of prisoners and imposed other obstacles to litigation by inmates.[6] In passing the PLRA, Congress specifically sought to discourage federal civil rights litigation by prisoners, and the definition of "prisoners" includes incarcerated children.

The bills that became the PLRA were introduced by Republican leaders immediately after Congress convened following the 1994 elections, and the legislation was ultimately signed by President Clinton on April 26, 1996. The legislation had two goals: to limit "frivolous" lawsuits filed by prisoners and to limit the relief available in federal civil rights lawsuits over conditions of confinement.[7]

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1 *See, e.g.*, AMNESTY INTERNATIONAL, BETRAYING THE YOUNG: CHILDREN IN THE U.S. JUSTICE SYSTEM (1998); CHARLES DICKENS, OLIVER TWIST (1838).

2 *See, e.g.*, Cox v. Turley, 506 F.2d 1347 (6th Cir. 1974); Doe v. Burwell, 537 F. Supp. 186 (S.D. Ohio 1982); D.B. v. Tewksbury, 545 F. Supp. 896 (D. Or. 1982).

3 *See, e.g.*, Hewett v. Jarrard, 786 F.2d 1080 (11th Cir. 1986); Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y. 1973); Lollis v. New York Dep't of Soc. Servs., 322 F. Supp. 473 (S.D.N.Y. 1970), *modified*, 328 F. Supp. 1115 (S.D.N.Y. 1971).

4 *See, e.g.*, Nelson v Heyne, 491 F.2d 353 (7th Cir. 1974); Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd*, 535 F.2d 864 (5th Cir. 1976), *rev'd*, 430 U.S. 322 (1977); Alexander S. v. Boyd, 876 F. Supp. 773, 782 (D.S.C. 1995), *aff'd in part and rev'd in part on other grounds*, 113 F.3d 1373 (4th Cir. 1997), *cert. Denied* 522 U.S. 1090 (1998). *See generally* MICHAEL J. DALE ET AL., *Legal Rights of Children in Institutions*, in REPRESENTING THE CHILD CLIENT (2001).

5 18 U.S.C. § 3626, 42 U.S.C. § 1997e(d). See generally Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555 (2003) (analyzing inmate litigation before and after the PLRA)

6 *E.g.*, Lewis v. Casey, 518 U.S. 343 (1996); Sandin v. Connor, 515 U.S. 472 (1995); Whitley v. Albers, 475 U.S. 312 (1986).

7 141 CONG. REC. S14414-16 (daily ed. Sept. 27, 1995); *id.* at 14418 (remarks of Sen. Hatch); *Prison Reform: Enhancing the Effectiveness of Incarceration: Hearings before the Senate Comm. on the Judiciary*, 104th Cong., 1st Sess. 2 (1995); *Taking Back our Streets Act of 1995: Hearings before the*

To limit "frivolous" litigation, the statute requires exhaustion of administrative remedies prior to filing suit, allows dismissal of frivolous actions by the court *sua sponte*, limits recovery for mental or emotional injury to cases in which a prisoner can show physical injury, and requires payment of the filing fee by the prisoner if he has any funds available.[8] To limit the relief available in federal civil rights lawsuits over conditions of confinement, the PLRA imposes stringent requirements for prospective (injunctive) relief, requires an order by a three-judge court before any prisoners may be released, provides that any relief shall be "terminable" after two years, automatically stays existing relief if the defendants file a motion to modify or terminate relief, limits the authority of special masters who are appointed to assist the court in implementing relief, and sets hourly fees far below market rate for special masters and for attorneys for prevailing plaintiffs.[9] There have been numerous challenges to provisions of the PLRA, and several cases have reached the U.S. Supreme Court. The Court has upheld the statute against all attacks.[10]

A major area of controversy in conditions and confinements cases has been the availability and amount of attorneys fees for successful plaintiffs. These issues were the focus of a recent decision by the U.S. Court of Appeals for the Eighth Circuit. *Bloomberg v. Christina A.*[11] involved conditions of confinement for children at the South Dakota State Training School. The issues are of particular interest in the District of Columbia, where litigation over conditions in the city's juvenile detention facility and attorneys fees for plaintiffs in *Jerry M. v District of Columbia* has been going on for sixteen years.

Though the factual situations may be compelling – entailing terrible abuses of children – conditions of confinement cases are difficult to litigate. They require substantial investment of resources by plaintiffs' attorneys in terms of time and out-of-pocket expenses. Plaintiffs' counsel must navigate the obstacles imposed by the PLRA and adverse case law. In *Buckhannon Board and Care Home, Inc.,*

House Subcomm. on Crime of the Comm. on the Judiciary, 104th Cong., 1st Sess. 2 (1995). *See generally* Lynn S. Branham, *Toothless in Truth? The Ethereal Rational Basis Test and the Prison Litigation Reform Act's Disparate Restrictions on Attorney Fees*, 89 CALIF. L. REV. 999 (2001).

8 42 U.S.C. § 1997e(a), (c), (e), 28 U.S.C. § 1915(b). There is considerable controversy about "frivolous" prisoner lawsuits. The Chief Judge of the Second Circuit conducted his own unsuccessful search for the "Top 10 frivolous prisoner lawsuits" cited by supporters of the legislation. Hon. Jon O. Newman, *Foreward: Pro Se Prisoner Litigation: Looking for Needles in Haystacks*, 65 BROOKLYN L. REV. 519, 520-523 (1996).

9 18 U.S.C. § 3626 (a), (b), (e), (f), 42 U.S.C. § 1997e(d).

10 *E.g.,* Porter v. Nussle, 534 U.S. 516 (2002) (upholding the requirement of exhaustion of administrative remedies under the PLRA, even if the remedies available could not provide the relief sought).

11 315 F.3d 990 (8th Cir. 2003), *rev'g,* Christina A. v. Bloomberg, 167 F. Supp. 2d 1094 (D.S.D. 2001).

v. West Virginia Department of Health and Human Resources[12] the Supreme Court contracted the definition of "prevailing parties" entitled to attorneys fees by excluding situations where defendants voluntarily changed their conduct, even when the changes were those sought by plaintiffs in litigation. Consequently, many attorneys will not take on such difficult litigation if they cannot receive compensation at reasonable rates when they are successful, and therefore abusive conditions, no matter how horrific, may go unchallenged.

The issue is also about money. The PLRA restricts attorneys fees in conditions of confinement cases to an hourly rate not greater than 150% of the hourly rate for federal court-appointed counsel established under 18 U.S.C. §3006A. That hourly rate is less than $100 per hour. Under 42 U.S.C. §1988, however, the general rule in other civil rights cases (e.g., involving employment or housing discrimination) is that plaintiffs who are "prevailing parties" in a civil rights case are entitled to hourly fees at market rates.[13] In *Christina A.*, the market rates for plaintiffs' attorneys were much higher than PLRA rates; for example, the market rate for lead counsel was $330 per hour. Since litigation over conditions of confinement often involves hundreds and even thousands of hours of attorney time, the difference in total fees under the PLRA rate and under market rates can be hundreds of thousands of dollars.

I. THE *CHRISTINA A.* LITIGATION

Christina A. v. Bloomberg involved abusive conditions and practices at the South Dakota State Training School in Plankinton, South Dakota, including excessive use of restraints ("four-pointing" – handcuffing and shackling children to their beds), excessive isolation, inadequate mental health services, inadequate education (including special education for disabled students), and inadequate training of staff. The plaintiffs, youth confined at the facility, and the defendants, the superintendent of the Plankinton facility and the secretary of the state Department of Corrections, settled the substantive claims by a Settlement Agreement in

12 532 U.S. 598 (2001). *See generally* Macon Dandridge Miller, *Catalyst as Prevailing Parties Under the Equal Access to Justice Act*, 69 U. CHI. L. REV. 1347 (2002) ;Deborah M. Weissman, *Law as Largess: Shifting Paradigm of Law for the Poor*, 44 WM. & MARY L. REV. 737 (2002); Michael Ashton, Note, *Recovering Attorneys' Fees with the Voluntary Cessation Exception to Mootness Doctrine after Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 2002 WIS. L. REV. 965 (2002); Mary D. Fan, Note, *Textual Imagination*, 111 YALE L. REV. 1251 (2002) (describing Buckhannon as privileging "a cannon of statutory construction over legislative record of congressional intent"); Richard Gibson, Note, *Redefining the Civil Rights Attorney's Fees Award Act: Buckhannon Board and Care Home and the End of the Catalyst Theory*, 52 CATH. U. L. REV. 207 (2002); 115 HARV. L. REV. 457, Leading Cases (2001); Martha Pacold, Comment, Attorney's' Fees in Class Actions Governed by Fee-Shifting Statutes, 68 U. CHI. L. REV. 1007 (2001); Marilyn A. Mahusky & Joseph A. Reinert, *Erosion of Civil Rights Enforcement: Judicial Constriction of the Civil Rights and Disability Law Bar*, 28-Jun VT. B. J. 41 (2002).

13 *See* Hensley v. Eckerhart, 461 U.S. 424, 433 (1983); Blum v. Stenson, 465 U.S. 886 (1984).

November 2000. The Agreement required numerous changes in conditions and policies at the facility, and provided for monitoring by plaintiffs' counsel for a period of one year.[14] In December 2000, the District Court formally approved the Settlement Agreement and kept jurisdiction over the case during the next year for the purpose of enforcing the Settlement Agreement. Plaintiffs' attorneys monitored the facility during the next year. On December 31, 2001, the state decided to close the facility permanently.

A. Prevailing parties

After signing the Settlement Agreement, plaintiffs moved for attorneys' fees, pursuant to 42 U.S.C. § 1988. The defendants objected that the state had changed the conditions and policies "voluntarily" and therefore the plaintiffs were not "prevailing parties."[15] The plaintiffs responded that many of the changes were directly required by the terms of the Settlement Agreement. Moreover, plaintiffs claimed that – whether or not the state voluntarily made the changes — the litigation was a "catalyst" for the changes, and under case law they were entitled to fees for that reason.[16]

The "catalyst theory" was an accepted basis for attorneys fees in most federal circuits, including the Eighth, when the plaintiffs submitted their motion.[17] However, by the time the District Court actually ruled on the motion, the U.S. Supreme Court had closed that road. *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*[18] was decided on May 29, 2001, more than six months after the parties entered into the Settlement Agreement, more than five months after the District Court approved the Agreement, but four months before the District Court ruled on the fees motion. It held that where defendants change their conduct voluntarily, plaintiffs are not entitled to attorneys fees, even if the changes were those sought by plaintiffs in the litigation. Such changes "lack the necessary judicial *imprimatur*."[19] Furthermore, the fact that the litigation was a "catalyst" for the changes is an insufficient basis for

14 Christina A. v. Bloomberg, 167 F. Supp. 2d 1094 (D.S.D. 2001).

15 42 U.S.C. § 1988.

16 Hewitt v. Helms, 482 U.S. 755, 760 (1987).

17 *See, e.g.,* Stanton v. Southern Berkshire Regional Sch. Dist., 197 F.3d 574, 577 n. 2 (1st Cir. 1999); Marbley v. Bane, 57 F.3d 224, 234 (2d Cir. 1995); Baumgartner v. Harrisburg Hous. Auth., 21 F. 3d 541, 546-550 (3d Cir. 1994; Payne v. Board of Ed., 88 F.3d 392 (6th Cir. 1996); Zinn v. Shalala, 35 F.3d 273, 276 (7th Cir. 1994); Little Rock Sch. Dist. v. Pulaski Cty. Sch. Dist. #1, 17 F.3d 260, 263 n.2 (8th Cir. 1994); Kilgour v. Pasadena, 53 F.3d 1007, 1010 (9th Cir. 1995); Beard v. Teska, 31 F.3d 942, 952 (10th Cir. 1994); Morris v. West Palm Beach, 194 F.3d 1203, 1207 (11th Cir. 1999). See Buckhannon v. Board and Care Home, Inc., v. West Virginia Dep't of Health and Human Res., 532 U.S. 598, 622-628 (Ginsburg, J., dissenting).

18 532 U.S. 598, 121 S. Ct. 1835 (2001).

19 Id. at 605.

an award of fees. Instead, plaintiffs must obtain a "judicially sanctioned"[20] change in the defendant's conduct such as a judgment on the merits or a court-ordered consent decree. The Court emphasized the importance of "judicial approval and oversight"[21] over "a material alteration in the legal relationship of the parties."[22]

In awarding fees in *Christina A.*, the District Court held that even though the plaintiffs could no longer rely on the catalyst theory, they were nevertheless entitled to attorneys fees. The changes made by the defendants were not "voluntary," and therefore the Settlement Agreement met the requirements of *Buckhannon*:

> The Settlement Agreement in this case is not a formal consent decree. But to read *Buckhannon* to require one particular form for resolving a dispute in order to become a prevailing party is to read the opinion too narrowly . . . . The Settlement Agreement requires Defendants to make certain improvements at Plankinton and allows Plaintiffs to enforce those changes within a year. In its Order dated December 13, 2000, this Court expressly retained jurisdiction over the matter for the purpose of enforcing the Settlement Agreement. Thus, unlike a voluntary change undertaken by a defendant, the changes embodied in the Settlement Agreement do not lack "the necessary judicial *imprimatur*."[23]

B. Hourly rate

In requesting fees, the plaintiffs also claimed that the PLRA attorneys fees limitations did not apply to them because the case involved a juvenile facility. They reasoned as follows. The limitations on attorneys fees in the PLRA are contained in § 803 of the Act and apply to "any action brought by a prisoner who is confined to any jail, prison, or other correctional facility."[24] The plaintiffs in *Christina A.* were "prisoners" within the meaning of § 803.[25] However, they were not confined in a "jail, prison, or other correctional facility." Instead, they were confined in a facility "for juveniles."

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20 *Id.*

21 *Id.*

22 *Id.* at 604, quoting Texas State Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 792-793 (1989).

23 167 F. Supp. 2d at 1098-1099.

24 42 U.S.C. §1997e(d)(1).

25 42 U.S.C. §1997e(h): "As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violation of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program."

When it was enacted, § 803 amended an existing statute, the Civil Rights of Institutionalized Persons Act (CRIPA).[26] In a provision that pre-dated enactment of the PLRA (and was unchanged by enactment of the PLRA), CRIPA expressly defined the term "institution" and identified five types of facilities.[27] One type, identified in subsection (ii) of the provision, is "a jail, prison, or other correctional facility." Another type of facility, identified in subsection (iv), is "for juveniles." Since CRIPA expressly applies to prisoners in "a jail, prison or other correctional facility," as distinguished from prisoners in facilities "for juveniles," and since the plaintiffs in *Christina A.* were in a facility "for juveniles," the plaintiffs claimed that the attorney fee limitations in § 803 did not apply to their lawsuit. The District Court agreed[28] and awarded fees at market rates, a total of $302,617.50 for more than 1,500 attorney hours, plus $74,019.98 in costs as reimbursement for out-of-pocket expenses.

It is an understatement to say that the District Court was bucking the tide on the issue of hourly rates. Two appeals courts had previously ruled on the issue. The Fourth Circuit, in *Alexander S. v. Boyd,*[29] and the District of Columbia Court of Appeals, in *District of Columbia v. Jerry M.*,[30] held that the fee limitations in the PLRA do apply to cases involving juveniles incarcerated in juvenile facilities, although the courts ruled for different reasons.[31] The defendants appealed the award of fees, basing their argument on *Alexander S.*, Jerry *M.*, and *Buckhannon.*

C. The Eighth Circuit opinion

The Eighth Circuit opinion was a 2-1 split decision of a three-judge panel. The majority held that under *Buckhannon*, the plaintiffs were not prevailing parties. Even though the District Court had approved the Settlement Agreement and found it to be "fair, reasonable, and adequate," the panel found it a fatal flaw that the District Court did not explicitly incorporate the terms and conditions of the

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26 42 U.S.C. §1997 *et seq.*

27 42 U.S.C. §1997(1): As used in this subchapter:
(1) The term "institution" means any facility or institution –
(A) which is owned, operated, or managed by, or provides services on behalf of any State or political subdivision of a State; and
(B) which is–
(i) for persons who are mentally ill, disabled, or retarded, or chronically ill or handicapped;
(ii) a jail, prison, or other correctional facility;
(iii) a pretrial detention facility;
(iv) for juveniles . . .
(v) providing skilled nursing, intermediate or long-term care, or custodial or residential care.

28 167 F. Supp. 2d at 1099-1100.

29 113 F.3d 1373 (4th Cir. 1997).

30 717 A.2d 866 (D.C. 1998).

31 *Compare* 113 F.3d at 1383-1385 *with* 717 A.2d at 869-875.

agreement into its opinion and order. Further, although the District Court retained jurisdiction over the agreement for one year for the express purpose of enforcing it, the panel found that a violation of the agreement would not support a citation for contempt.[32] Accordingly, the Court found that the agreement lacked "judicial imprimatur"[33] and was not akin to a consent decree but merely a "private settlement agreement."[34] The PLRA defines a "private settlement agreement" as "an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled."[35] Further, the Court found that the fees limitations in the PLRA apply to juveniles in juvenile facilities, relying on *Alexander S. v. Boyd.*

The third judge on the panel filed a vigorous dissent on the issue of prevailing party status: "The Court in Buckhannon did not limit the availability of prevailing party status to only those cases resolved through a consent decree or final judgment on the merits."[36] Rather, he noted, the Supreme Court identified criteria to determine whether there is "a judicially sanctioned, material change in the legal relationship of the parties."[37] The criteria were finality, judicial approval, judicial oversight, and enforcement jurisdiction.[38] He found that all were present in *Christina A.* Moreover, he noted that the Eleventh Circuit had approved a settlement agreement in similar circumstances, finding *Buckhannon* to be no impediment.[39]

Plaintiffs petitioned the Eighth Circuit for rehearing en banc, pointing out that the majority decision by the panel conflicted not only with case law in the Eleventh Circuit, but also in the Fourth[40] and Ninth[41] Circuits, as well as in the Eighth Circuit itself.[42] The en banc Court voted 6-5 to deny the petition, leaving the plaintiffs with no fees or costs.

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32 315 F.3d at 992-994.

33 *Id.* at 993.

34 *Id.* at 994, citing Kokkonen v. Guardian Life Ins., 511 U.S. 375, 381 (1994).

35 18 U.S.C. § 3626(g)(6).

36 315 F.3d at 996.

37 *Id.*

38 *Id.* at 997, noting that Kokkonen, *supra* note 35, should be limited to its holding – that "district courts lack *inherent* authority to enforce settlement agreements where there is no incorporation of the agreement in the order of dismissal or retention of enforcement jurisdiction" – but should not be expanded to mean that district courts lack authority to enforce settlement agreements where they have expressly retained jurisdiction for the purpose of enforcement.

39 *Id.* at 999, citing American Disability Ass'n, Inc. v. Chmielarz, 289 F.3d 1315, 1318-1320 (11th Cir. 2002).

40 Smyth v. Rivero, 282 F.3d 268 (4th Cir. 2002).

41 Barrios v. California Interscholastic Fed'n, 277 F.3d 1128 (9th Cir. 2002); Watson v. County of Riverside, 300 F.3d 1092 (9th Cir. 2002).

42 Gilbert v. Monsanto, 216 F.3d 695 (8th Cir. 2000).

II. AVOIDING LANDMINES – SOME LESSONS FROM *CHRISTINA A.*

A. *The "judicial imprimatur" should be clear and unmistakable.*

To avoid the fatal consequences cited by the majority, a settlement agreement should require, for it to be binding on the parties, a court order that retains jurisdiction *and* explicitly incorporates the terms and conditions of the agreement. The purpose of retention of jurisdiction – to enforce the agreement – should also be explicit in the agreement and the court's order. In addition, the consequences of violation and the manner of enforcement of the agreement – i.e., through the contempt power of the court – should be made clear.

B. *The appellate courts are unsympathetic to the argument that cases involving juveniles in juvenile facilities are exempt from PLRA rate limits.*

Although the District Court in *Christina A.* agreed with the argument, every appellate judge who has ruled on the issue has turned it down. Evidently, if cases involving juveniles in juvenile facilities are to be treated differently than those involving adult prisoners, Congress will have to make that distinction by amending the PLRA.

C. *The above two considerations can pose difficult ethical and financial challenges to plaintiffs' attorneys.*

In many conditions of confinement cases, the defendants will agree to a resolution of the substantive claims, but will not agree to an explicit statement in the settlement agreement that plaintiffs are entitled to attorneys fees. This puts the plaintiffs in a potential conflict situation: if they protect their clients' interests by settling the substantive claims, they may jeopardize their fees. Refusing to settle on those terms, however, may jeopardize their clients' interests, and thereby violate their ethical duty to the clients. The U.S. Supreme Court addressed an extreme version of this situation in 1986 in *Evans v. Jeff. D,*[43] where defendants explicitly conditioned settlement of a civil rights action (over inadequate state services for disabled children) on plaintiffs' waiver of their fees. Plaintiffs accepted the offer, considering themselves ethically obligated to do so.[44] The Supreme Court upheld the agreement, but provided no guidance for plaintiffs' attorneys caught (or trapped) in this dilemma.

The financial difficulties posed by the PLRA fee limits are also evident. There is no question that the PLRA provisions, including the low cap on attorneys fees, have resulted in a dramatic decrease in lawsuits by prisoners. Between 1995 and 1999, federal criminal case filings increased by 32%, but prisoner civil rights liti-

43 475 U.S. 717 (1986).

44 *Id.* at 722.

gation decreased by 40%. By comparison, *other* civil rights actions (e.g., housing, welfare, voting) increased by 10% during the same period.[45]

D. *Advocacy after Christian A.*

A solution is elusive. As noted earlier, the Supreme Court has upheld the PLRA against every challenge. The Republican leadership in both houses of Congress, with its well-known antipathy toward trial attorneys,[46] is unlikely to support legislative changes that would increase fees for civil rights attorneys. What then can advocates for children in confinement do?

First, where abusive conditions exist, children's advocates should utilize all of the advocacy strategies available to put themselves in the strongest position for negotiating settlement agreements. Through media advocacy, for example, they can keep the public's attention focused on conditions in the facility, and keep pressure on public officials to make needed changes. In South Dakota, and other states such as Louisiana and Maryland, there has been extensive press coverage of abuses in juvenile facilities and reform efforts.[47]

To encourage conditions of confinement litigation where clear abuses are identified, and to assure plaintiffs attorneys that they will receive some level of compensation, charitable foundations and other funding sources such as IOLTA funds[48] should make grants to non-profit public interest law firms working on children's issues to litigate the claims. Some foundations have made such grants in the past and continue to do so, but many foundations actually prohibit grants funds from being used for litigation.

Civil rights attorneys should also consider litigating under state civil rights laws in state courts, where the PLRA does not apply.[49] Moreover, attorneys should

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45 Roger Roots, *Of Prisoners and Plaintiffs' Lawyers: A Tale of Two Litigation Reform Efforts*, 38 WILLAMETTE L. REV. 210 (Spring 2002).

46 E.g., Dana Milbank, *The Political Mind Behind Tort Reform*, WASH. POST, Mar. 25, 2003, at A21; George F. Will, *License to Legislate*, WASH. POST, Apr. 17, 2003, at A23; Sheryl Gay Stolberg, *Lobbyists on Both Sides in Medical Malpractice Debate*, N.Y. TIMES, Mar. 12, 2003, at A21.

47 *E.g.*, Jennifer Gerrietts and Lee Williams, *Lawsuit: Juvenile Abuse Continues*, ARGUS LEADER (Sioux Falls), Feb. 25, 2000, at 1; Jennifer Gerrietts, *"They would leave us shackled to the four-point bed . . . for days,"* ARGUS LEADER, Jul. 11, 2000, at 1; Jennifer Gerrietts, *Scores: State Knew About Boot-camp Abuse For Years*, ARGUS LEADER, Jan. 9, 2001, at 1; Todd Richissin, *Lt. Gov. Is Urged to Close Teen Jail*, BALTIMORE SUN, Nov. 27, 2001; Douglas Tallman, *Dad Says Son Victim of Sex Assault*, FREDERICK NEWS-POST, Dec. 21, 2001; *Cheltenham Guard Is Charged with Sexual Assault*, BALTIMORE SUN, Apr. 12, 2002; Doug Simpson, *Judge Orders Inmates Removed from Tallulah*, Associated Press, Nov. 12, 2002; Times-Picayune Editorial Board, *Tallulah and Beyond*, (New Orleans) TIMES-PICAYUNE, Nov. 18, 2002; Gwen Filosa, *The Trials of Tallulah*, TIMES-PICAYUNE, Feb. 16, 2003; Adam Nossiter, *After Lawsuits and Scandal, Louisiana Looks at Revamping Juvenile Prisons*, Associated Press, Mar. 6, 2003; The Advocate Editorial Board, *Prison Contract Calls for Action*, THE ADVOCATE (Baton Rouge), Mar. 11, 2003.

48 *See* Brown v. Legal Found, 123 S. Ct. 1406 (2003).

49 18 U.S.C. § 3626(d).

pursue state tort remedies for individual youth who endure dangerous and harmful conditions in juvenile facilities. Such cases may require less specialization than civil rights class actions, and there are far more personal injury attorneys than civil rights lawyers in this country. Moreover, corporate law firms will often represent individual abused youth on a *pro bono* basis.