

# Hard Time

Despite last week's Supreme Court victory, prisoners struggle to bring even worthy claims.

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**L**ast Monday, in *Jones v. Bock*, a unanimous Supreme Court delivered the first-ever high court victory for prisoners under the Prison Litigation Reform Act of 1995.

This groundbreaking decision is welcome, if only because the Supreme Court rejected a draconian interpretation of the statute. But despite its achievement, this recent ruling still leaves much left to do to fix the underlying problem: the PLRA itself.

The PLRA was a product of the Contract With America and reflected the successful exploitation of Willie Horton and the "War on Crime" for political gain. Although the claimed intent of the law was reduction of frivolous prisoner lawsuits, its provisions, particularly as federal courts have interpreted them, have created nearly insurmountable barriers to prisoner cases, regardless of merit.

At issue in *Jones v. Bock* was the U.S. Court of Appeals for the 6th Circuit's various glosses on the PLRA's exhaustion requirement for prisoner lawsuits. Under the 6th Circuit's regime, prisoners seeking to protect their constitutional rights in federal court had to (1) allege and prove they had exhausted all administrative remedies through the internal prison grievance process before filing suit; (2) name every prospective defendant in a prison grievance in order to later bring suit against that defendant in federal court; and (3) properly exhaust administrative grievances for every single claim in a lawsuit or face dismissal of the *entire* suit.

The Supreme Court rejected all of these procedural rules. It noted that the PLRA did not justify deviations from the usual pleading practices under the Federal Rules and that the 6th Circuit's imposition of these procedural rules found little to no textual support in the law itself.

Affirming the 6th Circuit would have barred virtually all

prisoners without counsel from asserting their civil rights in federal court. The 6th Circuit's PLRA exhaustion regime made it impossible for all but a tiny handful of prisoner suits to survive. Since April 2005, only 10 of about 500 prisoner lawsuits subjected to the exhaustion rules challenged in *Jones* have avoided immediate dismissal.

## A DIFFICULT OBSTACLE

At the same time, a decade's experience with the PLRA demonstrates that, even after the Supreme Court's new decision, the exhaustion requirement remains a difficult obstacle to judicial relief.

The exhaustion provision creates a baffling maze in which a barely literate prisoner's procedural misstep in the informal grievance system, long before filing a complaint, forever bars even the most meritorious claims.

Prison and jail grievance systems have deadlines that in many cases are a matter of days. Many such systems involve convoluted processes and unclear rules that are inconsistently applied.

Prisoners are often subjected to misinformation or threats by prison staff when they attempt to file grievances. Frequently, the grievances they do file are never answered. Ironically, a prisoner's failure to appeal the prison staff's failure to respond to a grievance often results in dismissal under the PLRA's exhaustion provisions.

These provisions require prisoners to exhaust their facilities' grievance processes no matter how futile the attempt, no matter how meritorious the prisoners' claims, and no matter how legitimate the reasons for failing to follow grievance procedures might be. In fact, the PLRA's exhaustion requirement applies even where a prisoner faces an immediate threat to health or safety. Indeed, a court in West Virginia noted that the exhaustion requirement applied despite the prisoner's claim of a "life-or-death situation."

In practice, the combination of these requirements has not advanced the asserted purpose of screening out frivolous prisoner complaints. Instead, because even meritorious claims do not receive judicial scrutiny unless the exhaustion requirements are satisfied, many if not most prisoners with meritorious claims are simply denied their day in court.

The results of the PLRA exhaustion provision are devastating.

- In Indiana, for example, staff who were allegedly complicit in the rape and repeated assault of a juvenile detainee escaped trial because the young victim had failed to file a grievance in a system in which the deadline was 48 hours—even though his mother had made repeated complaints to officials as the abuse was ongoing.

- Likewise, in Nevada, a prisoner alleged that jail officers beat him after he asked for grievance forms, injuring his neck and aggravating a pre-existing skull fracture. Although the prisoner participated in an internal affairs investigation in which one of the officers responsible was disciplined, the claim was dismissed because the prisoner did not file an official grievance.

- In New Mexico, a court dismissed on exhaustion grounds a suit by female prisoners who challenged strip searches by male staff, even though the prisoners had given written complaints about the searches to prison officials.

- In Louisiana, the 5th Circuit affirmed dismissal of the complaint of a prisoner, holding that his near-blindness was no excuse for his failure to exhaust.

- In New York, a district court dismissed a prisoner's lawsuit for failure to exhaust even though he had been transferred to a hospital for almost the entire period during which he could have filed a grievance, and he did file an administrative grievance as soon as he returned to the prison.

These stories are not isolated incidents. Each year, the exhaustion requirement dooms thousands of prisoner lawsuits without any regard to their individual merit.

### THE REAL PROBLEM

The Supreme Court's *Jones v. Bock* decision thus does not solve the problems the exhaustion provision has created nationwide. The statute itself is the problem.

To those who argue that exhaustion should be required to give prison staff an opportunity to fix problems before court intervention, the rejoinder is simple: This claimed purpose

could be served without requiring prisoners to follow hyper-technical grievance rules that they may not understand or even be aware of.

Instead, an exhaustion requirement could serve its purpose by requiring prisoners to present their claims to responsible prison officials before filing suit and, if they failed to do so, allowing a court to stay the case for up to 90 days so that the case may be returned to the prison officials for whatever administrative consideration they deem appropriate. Under such a framework, some cases would be resolved at the facility level, and those that are not resolved could go forward.

There are other provisions of the PLRA that are similarly dangerous and unnecessary. For example, one provision bars civil-rights damages for all cases of mental or emotional injury in the absence of physical injury. This keeps American prisoners from seeking justice for the types of abuse shown in almost all of the iconic pictures of degradation and mistreatment of the prisoners in Abu Ghraib. No one can defend closing the courthouse doors to protect correctional staff who engage in such forms of abuse here at home.

Similarly, the PLRA poses a variety of restrictions on the powers of the federal courts to enter and enforce injunctive relief. For example, the PLRA requires that injunctive relief in conditions-of-confinement cases be terminated on the defendants' motion unless the court finds that there is a "current and ongoing" violation of law. In other words, the only injunctions that are not subject to termination are those that have proved completely ineffectual to cure the violation.

These restrictions are unwise and could serve as a model for further limits on the ability of the courts to protect the liberties of all of us. Since passage of the PLRA, a number of similar bills have been introduced in Congress to curb the powers of the courts to enforce other civil-rights claims.

Thus, the PLRA remains, as it was before the Supreme Court's decision, an ill-considered and destructive law. The new Congress should affirm its commitment to restoring civil liberties by taking simple steps to reform the PLRA and repeal it where justice requires.

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