The Dynamics of Jail Reform Litigation: A Comparative Analysis of Litigation in California Counties

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Theory linking litigation onset, process, and outcome in jail reform lawsuits has been scarce. The author proposes a four-stage, comparative model: (1) conditions of surrounding legal and political environments, in concert with contextual factors (e.g., type of legal representation), set the stage for litigation in the trigger stage; (2) specific legal claims, defendants named, and litigation strategies shape litigation process at the liability stage; (3) the nature and degree of remedies crafted is shaped by complex interactions between litigants and judges at the remedy stage; and (4) judicial methods and litigant behavior shape negotiations, modifications, and compliance efforts in the postdecree stage. Using qualitative and quantitative research methods, the researcher examined hypotheses linking the four stages. All general-conditions lawsuits against California county jails between 1975 and 1989 ($N=43$) were coded and analyzed. Critical factors identified at each stage significantly influenced litigation incidence, process, and legal outcomes. The author discusses implications of a multimethod, comparative approach for studying court-ordered reform of public institutions.

Despite the number and importance of lawsuits challenging conditions in correctional facilities (Welsh & Pontell 1991), sociolegal theory and research about such litigation has been scarce (Feeley & Hanson 1986, 1990; Jacobs 1980). Nearly one-third of large jails (i.e., populations of 100 or more) in the United States are under court orders to remedy unconstitutional conditions of confinement (U.S. Department of Justice 1991); state prisons in 41 states operate under similar constraints (National Prison Project 1990). Yet, there has been little attention to developing or testing broad theoretical propositions about judicial intervention in corrections, or the surrounding context which shapes litigation onset, process, and outcomes. This article focuses on jail litigation in California since 1976. Comparison of jail litigation in California counties provides a starting point for the development of theory

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linking environmental conditions and differences between types of lawyers, laws, and courts to the onset, process, and outcome of jail litigation.

The unique problems, politics, and demographics of jails require separate analysis of jail litigation as distinct from prison litigation. In contrast to state and federal prisons, jails have been more insulated from public and scholarly scrutiny (Goldfarb 1975; Irwin 1985; Klofas 1990; Mattick 1974; Taft 1983; Welsh et al. 1991). Several distinctions are significant. For example, jails are operated at the municipal or county level. Counties have fewer resources available than states, yet are responsible for the majority of local criminal justice expenses. Jails house convicted offenders generally serving one year or less of time; they also house pretrial detainees, about half of the jail's daily population (Advisory Commission on Intergovernmental Relations 1984). The median stay in jail is just three days (U.S. Department of Justice 1990). Living conditions and legal issues differ as a result. For example, educational and treatment programs are rare in jails. Eighth Amendment violations are more difficult to establish because of shorter inmate stays (Champion 1991); and Fourteenth Amendment rights often form crucial bases for complaints (*Bell v. Wolfish* 1979; Gottlieb 1988; Herman 1988; *Occhino v. United States* 1982).

A second issue concerns the nature of methods used to study court-ordered correctional reform. Single case studies have been by far the dominant method used (e.g., Chilton 1991; Crouch & Marquart 1989; Martin & Ekland-Olson 1987; Yackle 1989). Case studies are indeed useful for understanding complex, lengthy civil lawsuits that involve multiple parties and multiple legal issues. Yet, in the most thorough review of research on jail and prison litigation to date, Feeley and Hanson (1986) suggested that researchers' reliance on the case-study approach has limited the generalizability of research findings. Further, problems of bias may result due to the selection of research sites based on a criterion of easy access rather than theoretical importance and to the frequent involvement of researchers in the litigation process itself (Cooper 1988). To address such problems, it is necessary to identify potentially relevant contextual variables and measure their influence across a number of sites.

The purpose of the study reported here is twofold: (1) to identify and examine potential relationships between jail litigation onset, process, and outcome; and (2) to develop a comparative perspective based on the empirical assessment of variations in litigation across different jurisdictions. Assessing variation in dimensions of litigation across jurisdictions can provide the building blocks for more advanced theory in this area. By systematically investigating a particular type of social

policy litigation, this study attempts to broaden our understanding of judicial intervention in a neglected arena of social change.

A Comparative Model of Social Policy Litigation

Phillip Cooper (1988) has proposed a general model of social policy litigation in federal courts. His model traces the development of litigation in the areas of housing, school desegregation, mental health, corrections, and police brutality. This is an "open system" model (Katz & Kahn 1978; Miller 1978), implying that input from the environment shapes the onset and transformation of disputes in a dynamic manner. The model consists of four analytical categories representing a rough chronology of events: (1) a trigger phase, (2) a liability phase, (3) a remedy phase, and (4) a postdecree phase. These analytical categories, informed by several other sociolegal perspectives, provide a useful framework for a model of jail reform litigation (see Fig. 1).

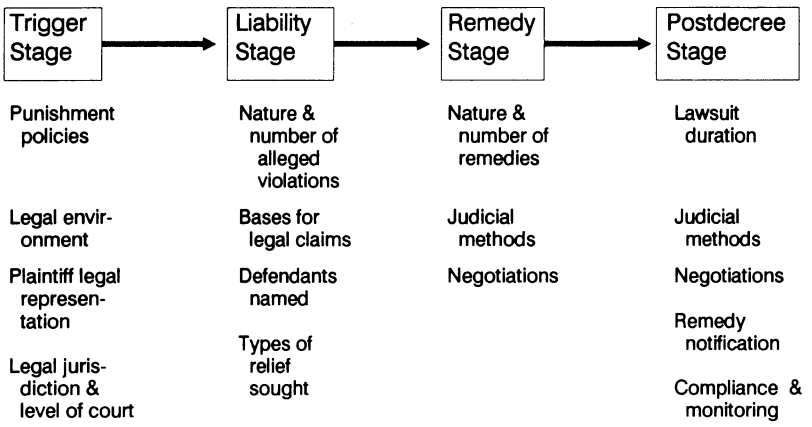

Figure 1. Process model of jail reform litigation

The Trigger Stage

In the trigger stage, long-standing practices and policies act in concert with some triggering event (e.g., a change in law, a riot) to push a conflict across a threshold where legal action is initiated. There is an explicit need to consider the environmental and contextual inputs into this process. For example, what are the relevant legal and political supports affecting legal mobilization? What influence do multiple parties exert? How do historical practices influence the incidence of litigation?

Environmental inputs include official policies and actions regarding the use of punishment and incarceration and rele-

vant case law and statutes affecting prisoners' access to legal forums (Cooper 1988; Huff 1980). Contextual factors include the type of plaintiffs' legal counsel and the strategies they adopt and the level of court chosen in which to file the lawsuit. The onset of litigation and its eventual form will be at least partly determined by prelitigation factors that vary from one case to another and from one jurisdiction to another.

Punishment and Incarceration Policies

Incarceration rates reflect, in part, the harshness of local policies regarding punishment (Kizziah 1984; Welsh et al. 1990). Incarceration rates are related partially to structural factors and crime rates (McCarthy 1990) but seem to indicate a powerful, independent dimension of local political culture (Klofas 1987, 1990). To the degree that particular jurisdictions use incarceration as a preferred sanction, there are increased demands for correctional space and services. Where high incarceration rates are accompanied by low rates of prisoner expenditures, it becomes less likely that constitutionally acceptable standards of conditions (e.g., adequate medical care, food services, clothing, sanitation, inmate safety) will be met, and prisoner lawsuits become more likely. One study found that states under court order to improve prison conditions were forced to raise expenditures to levels demonstrated by states not under court order (Harriman & Straussman 1983). Inadequate correctional spending may reflect a conservative political climate, a fiscally strapped county, or both, but the net effect is that jail conditions deteriorate and judicial intervention becomes more likely.

Similarly, jail populations and capacities reflect official policies at least as much as they reflect actual crime rates (Klofas 1987, 1990; Pontell 1984; Welsh et al. 1990). Jail populations depend partially on admissions, sentencing policies, and the range of pretrial and postconviction options available (Hall 1985; Jackson 1991). Overcrowding severely taxes the ability of institutions to safely house their charges and provide for basic human needs. The proper classification and segregation of inmates with different security needs and personal characteristics (e.g., gang memberships) become more difficult; security and supervision by guards become less efficient; food services become more irregular or meager; visitation is more restricted; physical plant maintenance (e.g., plumbing problems, rodent infestation) suffers; and inmate movement is curtailed (Harris & Spiller 1977; Feeley & Hanson 1990; Yackle 1989). Together, incarceration rates, expenditure rates, jail populations, and overcrowding represent useful indicators of local punishment practices that shape legal claims.

Legal Environment

Environmental factors influencing jail inmates' access to legal forums differ somewhat from those affecting state and federal prisoners. Two common statutory bases have been used to initiate lawsuits against state and federal prisons: (1) the federal Civil Rights Act (42 U.S.C. sec. 1983); and (2) federal habeas corpus law. Formulated in 1871 to protect the civil rights of former slaves, section 1983 has been used in more recent times to challenge the legality of actions by state agencies, including mental institutions, welfare departments, police agencies, and prisons (Call 1986; Cooper 1988; McCoy 1986). Section 1983 permits a civil action for damages, equitable relief, or both against persons acting under color of state law who deprive an individual of any federally protected right. Federal habeas corpus statutes have traditionally permitted challenges to the legality of a petitioner's conviction, but federal standards also permit challenges to restraints imposed by any authority in violation of the petitioner's constitutional rights (University of Illinois Law Forum 1980:202).

The jurisdiction of a court to hear jail lawsuits may be based on these same federal statutes but also on state statutes. State habeas corpus laws vary widely, but broad applications to institutional conditions have been recognized in some states such as California (*In re Chessman* 1955). While federal laws are generally applicable in state courts, favorable state habeas corpus laws may facilitate access to state courts and offer attractive supplementary vehicles for jail litigation.

Plaintiffs' Legal Representation

The types of legal counsel available to plaintiffs significantly shape litigation onset and process. Creating a strong record requires that plaintiff attorneys understand what appellate courts consider when reviewing cases, know the law in their field, are effective in working with expert witnesses, and are competent managers in guiding the case (Cooper 1988).

Prisoner advocacy groups such as the ACLU have a proactive and ideological commitment toward jail reform. Frequent litigants (repeat players) such as the ACLU may also enjoy competitive advantages (Galanter 1974): greater ability to structure the transaction; expertise; lower start-up costs; informal relations with institutional incumbents; ability to adopt optimal litigation strategies; and bargaining credibility. Private counsel may have less experience with jail reform litigation; they may possess different motivations (e.g., desire to recover attorney fees or damages); and they may be limited by professional interests and ties with local business and government elites (Kessler 1990). Public counsel (e.g., legal aid attorneys or public defenders) may

lack resources, commitment, or political freedom to challenge local elites. As a result, ideologically committed law firms specializing in prisoner litigation may pursue broader relief with greater vigor than other plaintiff counsel.

Federal Courts versus State Courts

Research on court-ordered correctional reform has overwhelmingly focused on federal rather than local trial courts (e.g., Crouch & Marquart 1989; DiIulio 1990; Martin & Ekland-Olson 1987; Yackle 1989). State courts constitute important but neglected arenas of social change. The choice of a particular legal forum partially determines the rules of relevance, the cast of actors, costs, delays, norms, and remedies (Felstiner et al. 1980–81). Federal courts often have broader powers of relief than state courts (Turner 1973), and such cases often involve higher stakes and more complex issues (Grossman & Sarat 1975). The level of court chosen may reflect the interactive influences of local environments and plaintiffs' legal representation.

The sociopolitical environments of local courts may limit the initiation of reform litigation (Galanter 1974; Kessler 1990). Plaintiff attorneys may perceive that such arenas favor the interests of locally dominant groups (especially local government), and "will exclude from consideration issues which threaten the interests of such groups" (Kessler 1990:126). Kessler described resistance encountered by five legal services agencies trying to initiate prison reform litigation in one state. Although skeptical of the ability or willingness of local courts to alter existing inequalities, he suggests that the local legal system "presents a promising arena in which to study relationships between political power, issue agendas, governmental allocations of resources, and the role of law and courts as promoters of change" (ibid.). The study's conclusions, while intriguing, are not easily generalizable across different jurisdictions, legal issues, client groups, or public institutions. Ideologically committed attorneys, for example, are less dependent on local power structures; and plaintiffs' counsel may more aggressively seek change in local courts if enabling case law and statutory law exist.

Trial judges may also behave differently in state and federal courts. Attorneys anticipate which judge will hear a case, and may maneuver to get a case before a particular judge in state or federal court. Because judicial persistence becomes important in enforcing compliance (Harris & Spiller 1977), a judge's record in complex civil cases may be informative (Koren et al. 1988). State court judges are less likely to have had previous experience with litigation against jails or other public institu-

tions than federal judges, whose jurisdiction spans a wider substantive and geographical area. Because most state court judges face periodic reelection, they may be less likely to risk issuing jail reform orders that might be interpreted by the public as being "soft on crime." The level of court chosen, therefore, may shape litigation strategies, the crafting of remedies, and attempts to gain compliance in significant ways.

The Liability Stage

Development of a case at this stage is shaped by the interactive efforts of lawyers for plaintiffs and defendants. Each attempts to create a strong record to shape judicial decisions. The form of the complaint filed by plaintiffs is crucial to the initiation of liability proceedings, as plaintiffs name certain officials as defendants, attempt to establish certain violations of law, and suggest specific remedies. The role of defendants is at first reactive, involving a response to alleged violations, but becomes more proactive as specific allegations are challenged and counteroffensives are mounted.

Violations Alleged in the Complaint

The specific violations alleged in complaints against correctional facilities have rarely been examined. The number of violations alleged may reflect the complexity of issues in a particular case and/or the adversariness of relations between litigants. The number and type of violations alleged depend on applicable state law, strategies adopted by plaintiffs' legal counsel, and local jail conditions and punishment practices. The complaint then plays a crucial role in framing and transforming the initial dispute. For example, allegations of inadequate medical care will require the testimony of health officials, and such documentation as inmate request slips and medical records may be needed. The ability of plaintiffs' attorneys to create a strong record influences negotiations, remedies and compliance (Cooper 1988).

Bases for Legal Claims

In addition to the federal constitution, jail litigation relies on state constitutions and state statutory, regulatory, and case law to frame legal arguments. A state's interpretation of its own constitution is not easily subject to reversal by the Supreme Court (Herman 1988). State constitutions, penal codes, and regulatory laws (e.g., health and safety codes, state jail standards) vary widely in the opportunities they present for prisoner litigation, and different strategies adopted by plaintiffs' legal counsel may influence the basis for legal claims. The legal

basis for specific claims, in turn, influences defendants' litigation strategies and shapes the nature and type of remedies that result.

Type of Defendant

The sheriff and jail commander, who share responsibility for managing the jail, are likely to be named as defendants. The county board of supervisors, however, is responsible for personnel and financial allocations to the jail. Government defendants have a variety of tools and resources at their disposal to frustrate plaintiffs' efforts. For example, defendants may attempt to buy time through filing numerous interlocutory appeals, diffusing responsibility among government agents, requesting extensions, filing motions to suppress evidence, and so on. Because of the centrality of their role to jail reform, it may be a wise litigation strategy to name supervisors as defendants. When government officials are named as defendants, it is less likely that they can deflect blame for jail problems (Welsh et al. 1990) and more likely that judges will hold them accountable for planning and expenditures crucial to jail reform. However, forced change may meet with resistance by politically powerful government officials (Sieber 1981), possibly escalating conflict and obfuscating attempts to garner compliance.

The Remedy Stage

In the remedy stage, a liability opinion is issued, eventually leading to a core remedy in the form of a decree. Initially, judges may play more of a "facilitator" role, encouraging the development of plans and negotiations between defendants and plaintiffs. However, if parties refuse to negotiate or fail to make progress, the judge may move toward a "ratifier/developer" role (Cooper 1988), taking a more active and formal role in crafting remedies. Extensive proposals, counterproposals, and additional testimony follow. The judge must consider several factors, including the appropriate nature, scope, and duration of relief available. The nature of relief provided is affected by what plaintiffs request, what plans defendants present, what case law and statutes allow, and the degree to which proposed remedies provide redress of violations. The means by which judges determine and exercise their policy range at this stage is crucial to implementation and compliance efforts in the postdecree stage.

Little descriptive work has examined the nature of remedies across jurisdictions. The types of remedies ordered are crucial to an exploration of jail litigation: the use of jail population caps to reduce overcrowding, for example, may result in numerous policy responses to reduce inmate populations, includ-

ing early release, citation release, and system expansion. The nature, number, and depth of remedies may be influenced by prior contextual variables, including the nature and frequency of alleged violations, the level of court chosen, and the strategies of plaintiffs' and defendants' legal counsel.

Although the complaint frames the issues to be litigated, there is no one-to-one relation between complaints and remedies. New issues may surface during the course of lengthy litigation. Some claims will eventually be upheld; others will not. If a claim is upheld, plaintiffs may ask for specific relief, judges may order defendants to formulate plans to achieve certain standards of performance, or both parties may negotiate extensively to craft remedies.

The relative attractiveness of state and federal courts to jail litigators remains a ripe area for research. Where a favorable legal climate exists, many jail cases may be initiated in state courts. However, because of environmental constraints facing local judges, cases heard in state courts may evidence less extensive breadth and depth of relief and may be associated with greater conflict between litigants and judges. Conversely, state courts may face less controversy over issues of federalism in cases involving local government officials (Neuborne 1981). Depending on individual judges, litigants, and local political culture, state courts may face different supports and constraints in formulating remedial options.

Similarly, the type of defendant can facilitate or constrain judicial options and remedies. When county government officials are named as defendants, judges may exercise more direct influence on the executive branch. Since county officials control resource allocations to jails, judges may compel specific standards of behavioral performance such as the renovation or expansion of jails, staff allocations, and the commitment of funds to improve jail conditions. As noted, however, issues of federalism or ties to local political cultures can constrain judicial responses, and politically powerful defendants may strongly resist judicial intervention.

The Postdecree Stage

In the postdecree stage, orders are implemented, monitored, and refined though complex interactions between litigants, judges, and other stakeholders. This stage often lasts several years (Cooper 1988:24). Contextual factors (legal representation, litigant behavior, level of court) influence judicial methods used to motivate compliance, negotiations, and the duration of a lawsuit.

Lawsuit Duration

Questions of the appropriate duration of judicial decrees are difficult matters. Prior to 1976, courts generally retained jurisdiction over the implementation of a decree until the illegal conduct and its effects had been eliminated. However, following *Pasadena City Board of Education v. Spangler* (1976), only the onset of good-faith implementation of an approved plan was required to relinquish jurisdiction. There is still considerable discretion involved in such determinations, however, and compliance is rarely a simple matter.

A protracted lawsuit may be systematically influenced by numerous factors. Cases involving ideologically motivated plaintiff attorneys and government defendants may evidence high levels of conflict. Ideologically motivated attorneys may fight harder and longer as a result of their commitment and experience, while government officials may mount greater resistance as a result of their political power and access to broad county resources. The complexity of a case, as indicated by the number of violations alleged in the complaint, influences lawsuit duration because a greater number of issues must be litigated, requiring more detailed presentation of evidence, testimony, expert witnesses, negotiations, formulation of plans, and monitoring. Cases heard in federal courts may last longer, on average, because of the greater expertise and persistence of federal judges. Courts tire of periodic review, and cases that require "repeated intervention quickly wear out their welcome in court" (Horowitz 1977:266). Federal judges have less crowded court dockets than state court judges, and greater experience with broad civil rights issues.

Compliance and Monitoring

Special masters have increasingly been used as "extensions of the court," gathering information on jail conditions and procedures, monitoring compliance, and in some cases, informally mediating disputes between litigants (Brakel 1979; Feeley & Hanson 1990; Montgomery 1980; Nathan 1979; Sturm 1985; Yale Law Journal 1979). The appointment of a special master may be influenced by the type of defendant, issue complexity, and level of court. Government defendants may resist attempts by plaintiffs' attorneys to monitor or gain compliance, creating a need for a nonpartisan third party to do so. Issue complexity, as reflected by the number and type of remedies issued, may result in a greater judicial need for nonpartisan monitoring. Finally, federal law provides more established rules for the use of special masters under Rule 53 of the Federal Rules of Civil Procedure (Kaufman 1958; Nathan 1979); provisions in state law, if any, are often vague or derivative (Feeley & Hanson 1990).

Federal court judges, therefore, may use special masters more often or more sagaciously.

A civil contempt citation involving fines or even jail sentences may be used when defendants have not met clearly set standards for performance. The use of contempt citations may be influenced by the level of court and type of remedies issued. Federal judges may be more likely to use contempt than state court judges because of their greater autonomy from local government and familiarity with federal rules for civil contempt. The nature of remedies issued may also influence the probability of contempt. To the degree that officials are directed to perform highly specific tasks such as building a certain number of jail cells, rather than afforded discretion to meet goals set by the court, contempt citations may be more likely. Cases involving greater issue complexity may also result in greater difficulty in meeting court directives.

Methodology

Coding Dimensions of Jail Litigation

Procedure

Using a comparative approach, this study controls for potential confounding factors (differences in state statutory, regulatory, and case law) by investigating jail litigation across counties in an entire state. Court orders and complaints resulting in court orders against county jails were collected for all 58 counties in California. Ten of the 25 largest jail systems in the nation are located in California (U.S. Department of Justice 1990), and its jail population of 64,000 inmates is the largest in the United States (U.S. Department of Justice 1991). Although jails face multitudes of claims by individual inmates every year (Thomas, Keeler, & Harris 1986), this study examined only lawsuits that challenged general living conditions in jails. Case selection was based on two criteria: (1) lawsuits involving jail overcrowding and/or general conditions (at least three remedies specified); and (2) lawsuits with orders issued after 1975 but prior to June 1989.

Some court documents were obtained from the California Board of Corrections, the state agency responsible for inspecting jails. An additional year was spent contacting plaintiffs' and defendants' legal counsel, county sheriffs, and/or the specific court where the case was heard. Copies of the complaint, the original order or decree, and any additional orders were requested; respondents were offered a copy of the study results on completion. Forty-three cases were obtained, although some counties had multiple lawsuits (Los Angeles had 3; Ma-

dera, 2; Placer, 2; Riverside, 3; Santa Barbara, 2; and Santa Clara, 2). Thirty-five of 58 counties (60%), therefore, faced court orders.

Instrument

A coding form was developed to measure litigation dimensions. Type of legal representation (ideological/private/public), level of court (state/federal), type of defendant (county supervisors/jail commander/sheriff), lawsuit duration (months), use of contempt (yes/no), and use of special masters (yes/no) were coded from court documents. Thirty-seven potential violations (e.g., medical care, overcrowding) were coded for each case. For the complaint, alleged violations were coded on a yes/no basis. For the initial court order, two coding steps were followed. First, it was recorded which if any of 37 possible violations resulted in remedies (yes/no). Then, if a remedy was specified, the degree to which plaintiffs received the relief they asked for in the complaint was coded (0 = no relief; 1 = written plans only; 2 = less relief than sought; 3 = relief approximately equal to that sought; 4 = relief greater than sought; 5 = relief for issue not alleged in complaint). Additional orders by the trial court and any reversals by the court of appeals pertaining to each potential violation were also coded (yes/no; total number of additional orders).[1]

Cross-sectional Data

Cross-sectional statistics reflecting county punishment practices were coded from annual county profiles provided by the California Bureau of Criminal Statistics and jail population statistics provided by the California Board of Corrections. Incarceration rates, jail overcrowding, and per prisoner expenditures were calculated for 1976 and 1986.[2] The first time point represents conditions prior to the onset of jail litigation in most counties; only 3 of the 35 counties court-ordered (9%) were engaged in active litigation prior to 1 January 1976. The second time point represents a very active period in jail litigation.

[1] The complete coding form and instructions are available from the author. Interrater reliability was examined by comparing independent raters' codings of each of 37 potential violations and remedies to the author's ratings for each case. Orders were examined first on a yes/no basis (agreement about whether a specific order was made or not) and on an exact basis (overall agreement on the 0–5 scale). For complaints, 29 of the items (78%) resulted in perfect or substantial agreement, as evidenced by kappa coefficients exceeding .60 (Landis & Koch 1977). For orders (Y/N), 31 of the items (83%) showed substantial or perfect agreement; on the 0–5 scale, 27 of the items (73%) showed substantial or perfect agreement.

[2] The California Board of Corrections began collecting statistics on jail populations in 1976 and has conducted regular inspections of individual jails every two years since. Although the board monitors jail population and compliance with state jail standards, it has no official sanctioning power.

During 1986, lawsuits were active in 24 of the 35 counties court-ordered (69%); lawsuits in 7 counties (20%) had expired prior to 1 January 1986; in 4 counties (11%), lawsuits began after 31 December 1986.

Analyses

Analyses investigated univariate distributions and multivariate relationships between variables specified by the model. Since the cases examined constitute the entire population of jail conditions lawsuits in California between January 1975 and June 1989, summary statistics can be interpreted as population parameters rather than sample statistics. Parametric techniques (e.g., multiple regression) were used only to estimate the relative impact of independent variables. The primary emphasis is thus descriptive and analytical; generalizability of results to other state jurisdictions awaits further comparative study.

Results

The Trigger Phase

What conditions lead to the initiation of lawsuits challenging jail conditions? Analysts often assume that hardening punishment practices in the 1970s and 1980s led to increased use of incarceration and concomitant strain on jail facilities and conditions, but there has been little consideration of the fact that two-thirds of large jails (100 or more inmates) in the United States are *not* under court order (U.S. Department of Justice 1991). Jails and their environments, therefore, must vary on specific factors that shape the conditions for litigation. The trigger phase examines environmental conditions and contextual factors that influence the onset and shape of jail litigation.

Punishment Practices and Policies

Historical trends, such as jail conditions and punishment policies, partially determine the factors that lead to legal challenges. Counties characterized by harsh punishment practices, large jail populations, inadequate jail space, and insufficient prisoner expenditures may be more likely to face litigation because of their inability or reluctance to provide basic needs and services to inmates. Case studies have suggested such effects, but no comparative research has examined these questions with a sample of legal cases.

The influence of four environmental dimensions on the in-

Table 1. Influence of Punishment Policies on the Frequency of Court Orders in California Counties

		Counties under Order		Pearson
	N	No.	%	χ^2
Average daily jail population				
1976				
Small (1-100)	28	11	39.3	12.88*
Large (>100)	28	24	85.7	
1986				
Small (1–200)	25	10	40.0	9.75*
Large (>200)	28	25	80.6	
Incarceration rate				
1976				
Low (1-10)	28	16	57.1	0.69
High (>10)	28	19	67.9	
1986				
Low (1-17)	28	17	60.7	0.78
High (>17)	28	18	64.3	
Overcrowding				
1976				
Low (1–65)	28	12	42.9	9.22*
High (>65)	28	23	82.1	
1986				
Low (1–100)	19	8	42.1	5.10*
High (>100)	37	27	73.0	
Per prisoner expenditures				
1976				
Low ($1–$9,000)	27	16	59.3	0.23
High (>$9,000)	29	19	65.5	
1986				
Low ($1–$9,000)	23	15	65.2	0.12
High (>$9,000)	33	20	60.6	

NOTE: *Definitions:*
Incarceration rate = average daily jail population/county population × 10,000.
Overcrowding = average daily jail population/state board-rated jail capacity × 100.
Per prisoner expenditures = jail operational expenditures/average daily jail population. Expenditures were converted into 1980 constant dollars using National Deflators (state and local purchases) provided by the California Department of Finance.
*$p < .05$.

cidence of jail litigation was examined (Table 1).[3] Neither incarceration rates nor levels of prisoner expenditures were highly predictive of litigation frequency. It may be that neither incarceration rates nor jail expenditures, per se, define the conditions most conducive to jail lawsuits. Other factors such as prison administration and management practices certainly play an important role in shaping real and perceived violations (DiIulio 1987; Martin & Ekland-Olson 1987). However, large jail populations may create a logarithmically increasing de-

[3] Two counties (Alpine and Sierra) have no jails; they contract inmates to contiguous counties.

mand for services, with overcrowding speeding the deterioration of aging jail facilities and further taxing the ability of institutions to provide for basic human needs.

Counties with larger jail populations and a greater proportion of their rated capacity occupied in both 1976 and 1986 were disproportionately likely to be under remedial decree. As noted in the methodology, these two time points account for the dynamic nature of the environment, with the first representing a "prelitigation" period and the latter representing an "active" period of litigation. While longitudinal data covering greater time spans are not available, these cross-sectional data suggest that environmental conditions contribute strongly to the likelihood of jail litigation. These results are consistent with previous research suggesting that large inmate populations and severe overcrowding magnify and perpetuate diverse problems within the jail, including adequate inmate classification, food, medical care, supervision, visitation, sanitation, and other basic services (Chilton 1991; Harris & Spiller 1977; Martin & Ekland-Olson 1987; Yackle 1989).

Legal Representation

Plaintiff attorneys play a crucial role in launching jail litigation and defining legal issues. "Repeat players" specializing in inmate litigation may muster greater skills, commitment, and resources conducive to successful lawsuits, while private attorneys and publicly appointed counsel may be influenced by differential motivations, resources, and sensitivity to the local political environment.

Plaintiffs were represented by ideologically committed law firms such as the ACLU in only a small number of cases examined ($N=8$). They were more frequently represented by publicly appointed counsel ($N=11$) and private firms ($N=24$). Popular conceptions of the ACLU as the primary litigator in inmate lawsuits are challenged by these results. Ideologically committed firms may choose their cases quite selectively, targeting those institutions with more grievous violations. Doing so may facilitate a long-term litigation plan aimed at establishing legal precedents through several important "test" cases. Results suggested that ideologically committed firms targeted counties with significantly higher incarceration rates and overcrowding and somewhat lower prisoner expenditures (Table 2). Such conditions may also shape more vigorous litigation strategies by ideologically committed attorneys, including the number and nature of legal claims filed in the liability stage.

Public counsel, usually the county public defender's office, is likely to be appointed when a large number of inmate petitions alleging common violations are presented to a judge.

Table 2. Dimensions of Punishment in Counties under Court Order by Type of Plaintiffs' Legal Representation

	Ideologically Committed (N=8)	Private (N=24)	Public (N=11)	F-value (df=2,40)
Incarceration rate				
1976	12.8	10.6	10.7	0.79
1986	24.9	17.3	16.6	4.33*
Overcrowding				
1976	74.7	75.6	83.0	0.39
1986	133.0	113.2	109.7	4.03*
Per prisoner expenditures				
1976	$9,941.46	$10,535.10	$9,978.06	0.36
1986	$7,786.74	$10,177.66	$10,168.69	2.56

NOTE: For definitions see Table 1.
*$p < .05$

Such cases were likely to take place in smaller, more rural counties such as Humboldt and Solano. In these cases, other types of legal representation may not be readily available, either because the case does not offer an attractive "test case" for ideologically committed counsel, or perhaps because rural locations offer a lower density of skilled or interested private attorneys. No direct measure of differential attorney density was available, but an urbanicity measure was constructed by dividing the litigation sample into "rural" (county population of 200,000 or less) and "urban" groups (greater than 200,000). Ideologically committed attorneys filed 5 of their 8 lawsuits (62.5%) in urban areas; likewise, private attorneys filed 15 of 24 lawsuits (62.5%) in urban areas; in contrast, public defenders represented inmates in rural counties in 7 of their 11 lawsuits (63.6%). While neither the ACLU nor private attorneys were excluded in rural areas, such cases were more likely to pass to publicly appointed counsel.

Private attorneys may be the most active participants in inmate litigation for several reasons. First, they are more numerous than other types of counsel, especially in large urban areas in the southern (Los Angeles) and northern (San Francisco) parts of the state. Many counties under court order lie in the surrounding metropolitan areas of these two cities, suggesting a convenient "springboard" for entrepreneurs. Second, if their practices are reasonably large, diverse, and stable, private attorneys may be more able to sustain the resources requisite to engaging in prolonged jail litigation. Third, while damage claims are usually dropped from general-conditions lawsuits in favor of equitable relief, the potential of recovering attorney fees over an extended period may stimulate involvement of private attorneys. A private attorney may also garner many "spin-off" cases by gaining access to numerous jail inmates who re-

quest assistance with their criminal cases or individual damage claims. Attorney selection factors may have far-reaching consequences on subsequent litigation processes and outcomes.

Various types of legal counsel also represented plaintiffs in different courts. Of 8 cases filed by ideologically committed attorneys, 6 (75%) were filed in federal court. Of the 24 cases filed by private attorneys, only 8 (33%) were filed in federal court. All 11 cases in which public counsel participated occurred in state courts. The greater propensity of ideologically committed firms to file in federal courts may be due to greater familiarity with federal law and more experience litigating broad civil rights issues in the federal courts. The ACLU, for example, is active in jail and prison reform nationwide through the National Prison Project in Washington, D.C., and supplies legal resources (e.g., information, expert witnesses, financial support) to local branches across the United States. Their greater experience may also dictate operative beliefs that significant reform is more likely in federal courts.

Legal Jurisdiction and Type of Court

A primary question about the initiation of jail litigation concerns how the decision to file in state or federal court is influenced by applicable statutory law. Previous studies of jail and prison litigation have rarely examined the extent to which lawsuits are based on state law, rather than federal, and the degree to which lawsuits are launched in state courts, rather than federal. Because only one state is analyzed here, the data cannot shed light on the answer to this question, but they do show that the legal grounds for litigation in state and federal courts are different. Litigation in state courts depends on the specific opportunities afforded by state law. California law affords favorable opportunities for jail litigation.[4] Of the 43 cases examined, 20 (65%) took place in state courts; 14 (33%) were filed in federal courts; 1 case (2%) was heard by the state supreme court.[5] Further investigation identified state habeas

[4] Broad habeas corpus laws in California (*In re Chessman* 1955) have supplemented federal statutes as attractive vehicles for inmate lawsuits. The California Penal Code § 1473 states: "Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint." Sections 1483 and 1485 also state, in part, that "the prisoner may be discharged from illegal conditions of restraint, although not from all restraint." Since "illegal conditions of restraint" may include unconstitutional conditions of confinement, state habeas corpus laws offer broad supplemental opportunities for litigation in state courts.

[5] The California Supreme Court issued an order to show cause to the Lake County sheriff in 1982 after county jail inmates filed a flurry of habeas corpus petitions complaining of inhumane conditions (*Los Angeles Daily Journal* 1989). The state public defender's office was appointed to represent the inmates, and retired Alameda County Superior Court Judge Spurgeon Avakian was appointed as a referee to take testimony and make findings. In 1983 a settlement agreement was reached. As part of the agree-

corpus laws as the impetus for jail litigation in state courts. Of 28 cases filed in state court, 20 (71%) were habeas corpus petitions, 5 (18%) were civil rights actions, and 3 (11%) were filed under both provisions. While state law thus facilitated the initiation of jail litigation in state courts, the local sociopolitical environments of state courts may impose limitations on *subsequent* litigation activities. In general, different prelitigation conditions carry different implications for litigation strategies (liability stage), judicial methods and decree formulation (remedy stage), and defendants' compliance with court orders (post-decree stage).

The Liability Stage

Questions about the liability stage concern the manner in which plaintiff attorneys attempt to shape a strong record and the manner and degree to which defendants resist such challenges. Actions at this stage largely determine the nature and magnitude of eventual remedies ordered, if any. The complaint is a crucial document in this process. It formulates a legal basis for action, introduces the nature and number of issues to be litigated, names specific defendants, and seeks specific types of relief. The paucity of research on jail litigation has resulted in a lack of systematic analysis of these issues.

Legal Bases for Claims

As discussed in the trigger stage, laws unique to particular states (e.g., habeas corpus) provide crucial opportunities for initiating jail litigation. It is also likely that differential opportunities for formulating and arguing legal claims will be afforded by unique state constitutions and regulatory laws. Such questions have rarely been addressed in a literature dominated by a focus on federal laws and correctional litigation in federal courts. In addition to federal law, judges hearing jail cases pay careful attention to legal claims based on state standards (e.g., *Inmates of Sybil Brand Institute for Women v. County of Los Angeles* 1982; *In re Gallego* 1982).

In California, the state constitution contains a broad guarantee of due process rights (art. I, secs. 11, 21), which is often used to mount claims against mistreatment of pretrial prisoners, and a ban against cruel and unusual punishment (art. I, sec. 17), which is often used to argue for relief of overcrowding

ment, the court was asked to transfer jurisdiction over the case to the Lake County Superior Court. However, then Chief Justice Rose Bird refused, explaining that the court could not do so because there was no provision in the state constitution for transferring a case back to a trial court once the supreme court had exercised jurisdiction over the case. As a result, the justices found themselves saddled with monitoring the case for the next seven years.

and poor living conditions (e.g., hygiene, medical care, food, recreation). Twenty-one lawsuits (49%) used these provisions of the state constitution to frame legal claims.

Plaintiff attorneys also based claims on state regulatory law, including the state Minimum Standards for Local Jails (15 California Administrative Code secs. 1000 et seq.) in 25 complaints (58%); sections of the state Penal Code (e.g., provision of clothing and food to jail inmates) in 28 cases (65%); and sections of the California Health and Safety Code (e.g., treatment for addicts) in 7 cases (16%). Overall, 36 of 43 complaints (86%) resulting in liability decisions cited multiple provisions of state law, suggesting the pervasive influence of legal climates on jail litigation opportunities and strategies.

Variation in Alleged Violations

The number of violations alleged in complaints ranged from a low of 1 to a high of 28, with an average of 12.8 per case. The most frequent allegations involved overcrowding (86% of cases), recreation (77%), hygiene provisions (77%), access to courts (77%), medical care (74%), sanitation (67%), food services (65%), ventilation (63%), visitation (48%), lighting (45%), inmate safety (45%), classification procedures (45%), censorship (41%), and staffing levels (36%). These core issues have constituted the major basis for jail lawsuits in California. While no one issue constitutes a violation of law, such issues form the basis for arguments that the "totality of conditions" (*Rhodes v. Chapman* 1981) violate state or federal law.

As suggested earlier, state and federal courts present different vehicles for litigation filing and strategies and are subject to different environmental influences. We might expect, therefore, that the number and type of issues litigated in state and federal courts would differ. A greater number of total violations were filed in federal (mean = 15.9) than state court lawsuits (mean = 11.3), suggesting a more restrained posture by attorneys for inmates in state courts. There were also some variations in the types of issues litigated. In federal lawsuits, attorneys for inmates were more likely to file violations over issues of medical care (93% vs. 64%), visitation (71% vs. 36%), and staffing levels (57% vs. 25%). Federal standards in the areas of medical care and visitation rights are well established (see Palmer 1987:chs. 3 & 10); staffing ratios were intimately related to inmate safety and Eighth Amendment claims (e.g., *Casselman v. Graham* 1987; *Cherco v. County of Sonoma* 1982; *Golden v. Taylor* 1986; *Hedrick v. Grant* 1976).

Because different types of legal counsel may employ different litigation strategies to achieve different goals (e.g., ideological reform, entrepreneurship, quick resolution), plaintiffs'

Table 3. Influence of Plaintiffs' Legal Representation on Types of Violations Alleged in Complaints

Type of Violation Alleged	Type of Legal Representation: Ideologically Committed ($N=8$) No.	%	Private ($N=24$) No.	%	Public ($N=11$) No.	%	χ^2 (2 df)
Medical care	8	100.0	19	79.2	5	45.5	7.88*
Visitation rights	7	87.5	13	54.2	1	9.1	12.01*
Access to courts	8	100.0	19	79.2	6	54.5	5.54
Censorship	6	75.0	9	37.5	2	18.2	6.35*
Food services	6	75.0	17	70.8	5	45.5	2.56
Recreation	8	100.0	18	75.0	7	63.6	3.52
Personal hygiene	7	87.5	20	83.3	6	54.5	4.14
Overcrowding	6	75.0	20	83.3	11	100.0	2.74
Ventilation	7	87.5	15	62.5	5	45.5	3.51
Lighting	7	87.5	12	50.0	0	0.0	15.12*
Safety of inmates	4	50.0	13	54.2	2	18.2	4.09
Sanitation	6	75.0	16	66.7	7	63.6	0.29
Classification	4	50.0	14	58.3	2	18.2	4.94
Staffing levels	3	37.5	10	41.7	2	18.2	1.86

*$p<.05$

legal representation may influence the type of issues raised in complaints, as well as the total number of violations alleged. Results showed that legal representation significantly influenced the total number of violations alleged ($F_{(2,40)}=13.0$, $p<.01$), with ideologically committed firms filing the most claims (mean = 19.8), followed by private firms (mean = 12.9) and public counsel (mean = 7.5). Ideological attorneys thus file fewer cases but more charges per case than other attorneys. Ideological attorneys may use a "shotgun" approach: by alleging the existence of a large number of violations, the totality of conditions standard may be more fully addressed. It was suggested earlier, however, that ideological attorneys also select cases partially on the basis of overcrowded and underfunded jail conditions. As a result, they may file many charges to address many perceived deficits.

Specific issues were also litigated with differing frequencies by different inmate counsel (Table 3). Ideological attorneys were more likely in their cases to allege violations of medical care, visitation privileges, censorship, and inadequate lighting than private or public counsel. The first three issues fit squarely into the civil rights agenda of the ACLU. Such issues have also been clearly defined in federal case law, a subject on which ideological attorneys are well informed. The problem of poor lighting may be a less obvious but important one. Poor lighting was often related to other concerns such as inmate safety (e.g., assaults occur in poorly lit areas) and access to legal materials

(e.g., the ability to read and prepare legal materials for one's defense). Differential experience and different goals, therefore, lead to differences in the nature and frequency of issues litigated by different attorneys, and perhaps the type and frequency of relief they obtain.[6]

Defendants

The type of defendants named in complaints is especially important. County supervisors, in particular, may have considerable political and fiscal resources to resist jail challenges and significantly influence the manner in which issues and remedies are contested. Those most often named as defendants were the county sheriff (91% of cases), the county board of supervisors (62%), and the jail commander (33%). In lawsuits naming the board of supervisors as defendants ($N=26$), more violations were filed in complaints (means = 15.3 when supervisors were named vs. 8.9 when supervisors were not named), suggesting greater prior neglect of jail problems in these cases and more vigorous attempts by plaintiffs' counsel to hold supervisors accountable for jail improvements. Indeed, *counties* in which supervisors were named as defendants ($N=23$) showed lower per prisoner expenditures (in constant dollars) in 1986 ($9,177) than other counties under lawsuit ($12,294) and a greater degree of overcrowding (118% vs. 106% of capacity filled) than other counties under lawsuit. Plaintiffs' legal representation may also influence whether supervisors are named as defendants. Private attorneys and public counsel may be more closely tied to local business and political elites and may be more likely to fear reprisals against their own businesses or careers. Supervisors with strong local ties may receive support from allies (e.g., members of the local bar, owners of prominent busi-

[6] Because environmental factors such as incarceration rates, jail population, overcrowding, and prisoner expenditures influence the incidence of litigation, they may also shape the nature of challenges to jail conditions. To distinguish the relative impacts of different trigger factors, a multiple regression equation was constructed that included environmental factors, type of counsel, and type of court. Jail overcrowding in 1986 was chosen as an independent variable because it was the only environmental variable correlated with total violations ($r=.43$). Dummy variables were created and entered for ideological, private, and public legal counsel, and for state court cases (1=yes, 0=no). The use of ordinary least squares (OLS) regression is generally suitable where categorical independent variables but continuous dependent variables exist (see Aldrich & Nelson 1984; Cleary & Angel 1984; Hanushek & Jackson 1977; Swafford 1980). The equation was significant ($F_{(4,38)}=7.60$; $p<.001$), accounting for 44% of the variance in total violations alleged. Comparison of R^2 (.44) to adjusted R^2 (.39) shows that there was little attenuation in R^2 due to sample size (Draper & Smith 1981; Tabachnick & Fidell 1983). Overcrowding did not significantly predict the number of alleged violations (beta =.24), and the public counsel variable failed to meet tolerance requirements for entering the equation. However, representation by ideologically committed (beta =.59) and private firms (beta =.37) contributed to a high number of legal challenges *independent* of overcrowding. The specific roles played by various legal counsel, therefore, exert a pervasive and dynamic influence on litigation process in the liability stage.

nesses, officials in various county agencies) who can apply pressure against private or public attorneys who challenge supervisors' authority. Results suggested that legal representation significantly influenced the naming of supervisors as defendants ($\chi^2=6.77$, $p<.04$). Ideologically committed attorneys named supervisors as defendants in 7 of their 8 cases (88%). Private firms did so in 16 of 24 cases (67%), while public counsel did so in only 3 of 10 cases (30%). Those most closely tied to local political cultures may indeed be less likely to challenge elites. Ideologically committed firms, in contrast to the other two types of counsel, are less fettered by environmental constraints, and may target supervisors more often due to greater experience suggesting the importance of holding government officials accountable for reform.

The level of court may also influence whether politically powerful officials are named as defendants. State courts may be perceived as partial to the interests of local elites and may be chosen less often as arenas for reform litigation as a result. Although state law in California presents favorable opportunities both for filing jail lawsuits and formulating legal claims in state courts, attorneys may be reluctant to directly challenge county supervisors because of anticipation of reprisals, prolonged resistance, or inadequate resources to sustain litigation. Results suggested that state courts had a chilling effect upon naming county supervisors as defendants ($\chi^2=5.05$, $p<.03$). Twelve of 14 cases filed in the federal courts (86%) named supervisors as defendants, while only 14 of 28 cases filed in state courts (50%) did so. While state courts are favorable to the initiation of jail reform litigation, they may still be perceived as more hostile settings for challenging government officials.

The Remedy Stage

Legal outcomes are shaped by a complex of forces, including specific legal claims and violations alleged, requests for specific relief, litigation strategies by plaintiffs and defendants, judicial methods for decree formulation, and negotiations between litigants and judges. This section explores variations in the number and type of remedies formulated in California jail lawsuits and examines potential causal influences. Research on jail litigation has so far failed to systematically examine variations in the nature and magnitude of relief ordered across cases, how contextual processes shape remedies, or relations between remedies and postdecree outcomes such as compliance and lawsuit duration.

The number of remedies specified in the original court order or decree ranged from 1 to 27 (possible range = 37), with a mean of 8.7 per case. The most frequent outcome was that no

relief was granted at all (mean occurrences = 31.3 per case). Remedies where the courts ordered only written plans (mean = 1.5 per case) or granted less relief than plaintiffs sought in the complaint (mean = 0.5) were rare. Remedies where plaintiffs received relief approximately equal to that sought in the complaint were more frequent (mean = 4.6). Plaintiffs very rarely received greater relief than sought (mean = 0.2), although they sometimes received relief on issues that emerged subsequent to filing the original complaint (mean = 2.0). The number of modified orders (issued subsequent to the original decision) ranged from 0 to 143, with a mean of 11.5 modifications per case. Over entire lawsuit histories (original orders plus modified orders), the courts issued an average of 20.2 orders per case. Appellate courts rarely altered orders issued by the trial court (only 10 orders in 3 cases).

Because there was considerable "attrition" between violations alleged and relief granted, the number of violations alleged correlated only moderately ($r = .41$) with the number of orders issued in the original decision. Across the entire history of cases, plaintiffs gained relief of any kind on only a subset of violations originally alleged in complaints. For the 14 most frequently alleged violations, relief was granted in a fraction of cases for lighting (37% of cases in which a violation was alleged), ventilation (42%), inmate safety (42%), inadequate food services (52%), staffing levels (53%), recreation (59%), sanitation (61%), access to courts (63%), medical care (65%), visitation rights (65%), classification (68%) censorship (70%), personal hygiene (70%), and overcrowding (86%). Attorneys were thus relatively successful in gaining relief in certain "core" areas (especially overcrowding), but much less successful in others. In spite of perceptions by some of a "radical judiciary," courts in this study were quite conservative in granting relief on most issues.

The nature and number of remedies may also vary across state and federal courts. In previous stages, it was suggested that state laws facilitate the initiation of litigation in state courts, but the environment of state courts may present constraints on subsequent litigant and judicial behavior. In federal lawsuits, more orders were issued in the original decisions (means = 13.2 vs. 6.3) and over the entire life of the case (means = 26.3 vs. 17.4) than in state courts. Federal courts were less likely than state courts to deny relief on particular claims (means = 26.6 vs. 33.7 issues per case) but equally likely to grant less relief than plaintiffs asked for (means = 0.4 and 0.6, respectively). Federal courts were more likely than state courts to grant relief equal to what was asked for (means = 8.1 vs. 2.8). These results suggest a pattern of greater relief in federal courts, but closer scrutiny is required.

Of the 14 most frequently alleged violations, federal courts were significantly more likely than state courts to grant relief only on issues of medical care (85% vs. 50% of cases in which violations were alleged in each court), recreation (83% vs. 45%), visitation (90% vs. 40%), and classification (100% vs. 50%). As suggested, some issues (medical care, visitation) are well established in federal case law, and federal judges may have greater acquaintance and experience with such precedents. Recreation and classification have less well-established precedents, but relate to Eighth and Fourteenth Amendment questions regarding the basic services and protections to be afforded to those deprived of their liberty (i.e., amount of time confined to cells, protection from other inmates). It was suggested earlier that in counties in which county supervisors were named as defendants, there was more overcrowding and underfunding. However, the greater political power of government defendants might result in more successful challenges to alleged violations, and thus less relief. Results challenge the political advantage thesis. In lawsuits naming the board of supervisors as defendants ($N=26$), more orders were issued in the original decision compared to lawsuits when they were not named (means = 10.8 vs. 5.1); more modified orders were issued (means = 16.8 vs. 3.6); and more total orders were issued over the life of the case (means = 27.6 vs. 8.7). Greater depth of relief was also found for lawsuits naming supervisors as defendants: there were fewer occasions where no relief was granted in response to original allegations (means = 29.2 vs. 34.8); and there were more occasions where plaintiffs received relief approximately equal to what was sought in the complaint (means = 5.7 vs. 2.6). Such results may reflect more grievous violations in these cases as well as greater persistence by plaintiffs' counsel. Indeed, orders to reduce overcrowding were more likely in cases where supervisors were named as defendants (69%) than in other cases (25%). The same was true of orders to improve staffing (35% vs. 0%), orders to improve the physical plant of the jail (39% vs. 13%), and orders to release sentenced inmates (54% vs. 25%). These issues define a constellation of politically unpopular and expensive policy decisions for which supervisors may be held uniquely accountable.

Given the pervasive influence of the type of legal representation demonstrated in the trigger and liability stages, we would expect that different types of counsel might also obtain different legal outcomes. In fact, plaintiffs' legal counsel did not influence either the breadth (number of orders) or the depth of relief (rated 0–5) received in the original decision. Jail lawsuits, however, are extremely complex, expensive, time-consuming, and demanding. Motions are filed; expert witnesses are brought in; conditions are monitored; negotiations are con-

ducted; sanctions for noncompliance are sought. Ideologically committed firms obtained more modifications (mean = 28.8) and total orders over time (mean = 39.0), while private counsel obtained more modifications (mean = 8.9) and total orders (mean = 18.5) than public counsel (means = 4.7 and 10.2, respectively). Ideological attorneys appear to be much more vigorous than other counsel not only in pursuing legal claims but also in the shaping of remedies and monitoring jail conditions over time.

To estimate the relative impact of explanatory variables, the total number of remedies was regressed on total violations alleged in complaint, supervisors as defendants (0–37); state court, and representation by ideological attorneys (all three coded 1 = yes, 0 = no). The regression equation was significant ($F=2.92$, $p<.04$), with ideological attorneys (beta = .31) and supervisor defendants (beta = −.31) emerging as the strongest predictors of total remedies. State court (beta = .08) and total violations filed (beta = .04) added little predictive power. More orders may be expected, therefore, when ideological attorneys challenge county supervisors. More adversarial relations and the expenditure of greater resources are suggested by this combination.

The Postdecree Stage

The initial remedy rarely spells the end of a jail lawsuit. Many additional orders and modifications are issued over time. The postdecree stage involves a lengthy and often difficult process of decree implementation, monitoring, evaluation, and refinement. The question of appropriate length of judicial supervision is equally difficult, as compliance is difficult to define, obtain, and sustain. Lawsuit duration will depend partially on what has come before and partially on new issues that may emerge (e.g., worsening overcrowding, changes in participation by key actors in the litigation). Competing strategies and plans are offered by plaintiff and defendants' counsel (e.g., parallel appeals, population reduction methods, etc.), and vigorous negotiations may follow. Judicial methods to gain compliance may vary widely, as may the roles played by the respective plaintiffs and defendants. This section examines variation in lawsuit duration and methods to gain compliance, as well as contextual factors which shape long-term responses to remedial decrees.

In general, jail lawsuits lasted a long time, 54.8 months on average. Only 10 cases (23%) lasted a year or less; 6 (14%) lasted one to two years; 8 (19%) lasted between two to four years; 19 (44%) lasted more than four years. Jail lawsuits in-

deed involve polycentric problems (Fuller 1978) not easily susceptible to judicial decree.

Differences in lawsuit duration may characterize state and federal courts, partially due to differential judicial experience, methods, and sensitivity to local environmental concerns, and partially due to differences in applicable laws and remedies. Federal court litigation lasted, on average, more than twice as long as superior court litigation (means = 84.7 vs. 38.5 months), suggesting greater judicial persistence, resources, and independence from local political environments.

Lawsuits naming county supervisors may also last longer due to greater resources and resolve to challenge both legal claims and judicial orders. Indeed, the involvement of county supervisors led to lawsuits that lasted nearly three times as long as other cases (mean duration of lawsuits = 71.8 months vs. 24.8 months). Ideologically committed attorneys may also fight harder and longer as a result of greater experience, resources, and resolve than other counsel. Lawsuits involving ideological attorneys lasted much longer (mean = 81.1 months) than cases involving private firms (mean = 58.7 months) and public firms (mean = 27.1 months), further suggesting the pervasive and dynamic influence of legal representation on jail litigation process and outcomes.

Lawsuit duration is also influenced by the number of legal claims and remedies. A high number of legal claims may indicate issue complexity or adversariness between litigants, while a larger number of remedies will require greater efforts and time to achieve some degree of compliance. Lawsuit duration correlated significantly with total orders over the life of the case ($r = .41$) and total violations alleged ($r = .35$).

To estimate their relative impact, the following variables were regressed on lawsuit duration: total remedies (0–infinity); total violations alleged (0–37); and supervisors as defendants, federal court, and ideological attorneys (all three coded 1 = yes, 0 = no). The resulting equation was significant ($F_{(5,36)} = 4.39$, $p < .01$), with total orders (beta = .25), federal court (beta = .33), and supervisors as defendants (beta = –.25) emerging as the strongest predictors. Lawsuit duration was influenced much less strongly by alleged violations (beta = .06) or ideological attorneys (beta = –.06). Judicial persistence in the federal courts may indicate longer periods of monitoring and greater reluctance to relinquish jurisdiction in the face of incomplete compliance. Another major reason for judicial persistence may be defendant resistance. County supervisors may mount considerable resistance throughout the litigation process, becoming only marginally more likely to comply as time passes. As a result, the type of court resumes a renewed importance in the postdecree stage.

Compliance and Monitoring through Special Masters and Contempt Orders

One of the judge's most flexible means of monitoring compliance is the appointment of a special master to act as the "eyes and ears" of the court. Special masters may be asked to inspect and report on jail conditions, as well as facilitate negotiations between litigants. Special masters may be most needed in lengthy, contested cases where compliance is most difficult. Special masters were appointed in 12 cases (29%) characterized by more original orders (means = 12.3 and 7.1), more modifications (means = 27.4 and 5.5), and more orders over the history of the case (means = 39.8 and 12.6). Cases involving special masters, in contrast to other cases, were also more likely to involve orders to reduce overcrowding (83% vs. 40%), raise staffing levels (50% vs. 10%), improve pretrial release procedures (58% vs. 27%), and release sentenced inmates early (75% vs. 30%). The intrusive nature of such remedies may demand labor-intensive observation which can best be provided by a skilled special master. In addition, cases involving special masters were more likely to have named the board of supervisors as defendants (83% vs. 53%) and were more likely to have occurred in federal courts (50% vs. 27%). There is little doubt that judges needed help to monitor these complex cases. Cases involving special masters lasted nearly twice as long as other cases (means = 79.1 vs. 43.8 months).

Contempt orders, or even the threat of contempt, may be used as a "method of last resort" when other attempts to gain compliance fail. Contempt orders may serve as a "wake-up call" to defendants of the court's resolve to enforce its orders, but they may also intensify conflict between defendants, plaintiffs, judges, and communities. Since only three counties (in four cases) were ever found in contempt of court, there was no basis for forming comparison groups. These four cases (*Branson v. Winter* 1981; *Cherco v. County of Sonoma* 1982; *Fischer v. Winter* 1983; *Stewart v. Gates* 1978) were particularly troublesome, resulting in an average of 65 total orders each and lasting an average of 129 months. All cases involved orders to reduce overcrowding; three occurred in federal court; three involved ideological counsel; all four involved the board of supervisors as defendants. Compliance in jail cases, therefore, was far from automatic, and was shaped by contextual factors in a dynamic manner.

Discussion

This study attempted to expand on a limited body of theory on court-ordered reform by examining a four-stage model linking litigation onset, process, and outcome in multiple jurisdic-

tions. Results suggest potential for using this model as a framework to describe different types of litigation across jurisdictions and to build a more cumulative body of theory about court-ordered reform.

Trigger Stage

Common historical and contextual factors which trigger and shape social policy lawsuits were examined in this study, which attempted to identify and examine several common inputs affecting jail litigation incidence and process. Jail overcrowding, for example, presents multiple obstacles to provision of basic protections and services, and it was an important predictor of jail litigation in California counties. State law limits or affords opportunities for inmate lawsuits, suggesting that state courts constitute much-neglected arenas for research on social reform. This research also suggested that various types of attorneys are motivated to file lawsuits by different goals and interests and employ different skills and strategies. Ideologically committed attorneys, for example, filed few lawsuits but selectively targeted jurisdictions with particularly overcrowded and underfunded conditions.

While these results provide evidence of general factors influencing legal mobilization, there is a need to address how attorneys evaluate various environmental and contextual factors in launching social reform lawsuits. Research on social policy litigation should look beyond assumptions of the fundamental uniqueness of each case and go beyond the treatment of environments as static and unidimensional. We need to identify a fuller range of common influences that trigger specific types of social policy lawsuits (e.g., mental health, education, policing), and we need greater recognition that prelitigation conditions shape subsequent litigation processes in a dynamic and interactive manner.

Liability Stage

Although much of the literature on remedial decrees proceeds swiftly to the remedy-crafting stage (Cooper 1988), the liability stage involves an interrelated set of actions that crucially affect legal outcomes and compliance. The influence of critical factors such as violations alleged, bases for legal claims, type of defendants named, and strategies by legal counsel have rarely been examined in a systematic manner.

Certain core issues (e.g., overcrowding, medical care) formed the basis for complaints in jail lawsuits, with neglected provisions of state law often providing the basis for legal claims. Ideological attorneys filed the most alleged violations,

partly as a result of more grievous jail conditions but partly as the result of a litigation strategy aimed at meeting a "totality of conditions" standard. Ideological attorneys also filed lawsuits more often in federal courts, partly due to their greater familiarity with federal case law and constitutional law and partly due to broader powers of judicial enforcement. County supervisors were more likely to be named as defendants by ideologically committed attorneys and rarely by public counsel. Cases involving supervisors also evidenced harsher environmental conditions, suggesting that more experienced repeat players targeted jurisdictions with more deprived conditions and attempted to assign responsibility to government officials as a means of achieving jail reform. Public and private counsel, more likely to possess direct or indirect ties to the local political environment, showed greater restraint. The roles played by politically powerful government defendants become critically important as cases progress (see Ekland-Olson & Martin 1988; Welsh & Pontell 1991).

Remedy Stage

Even after a liability opinion is issued, the remedy-crafting stage is often slow and arduous, involving lengthy negotiations between litigants and judges. The nature and frequency of remedies is shaped by litigation activities in previous stages, particularly the adversarial roles played by ideological attorneys and county supervisors and, to a lesser degree, judicial methods and applicable law in federal versus state court.

Federal courts issued more orders on average than state courts, although federal courts were more likely to grant relief on certain issues only (e.g., medical care), and both courts granted much less relief than sought by plaintiffs. Ideologically committed attorneys, in contrast to private or public counsel, obtained greater relief, and generally did so in federal courts, possibly due to greater resources and experience, freedom from local political constraints, and familiarity with constitutional law. Private firms were attracted to state court because of enabling state law, but they were less likely to challenge local political elites and neither pursued nor obtained as extensive relief. Local environments can thus be favorable in some ways and limiting in others, depending on characteristics of the particular litigants and their legal representation.

Lawsuits naming the board of supervisors as defendants evidenced considerable conflict. Politically powerful defendants have the resources and resolve to resist legal challenges, but were most likely to be held accountable for specific reforms (e.g., jail funding, staffing) when facing ideologically committed attorneys and federal judges. A side effect of forced ac-

countability, however, may be that supervisors were less able to deflect blame to other county officials or litigants, facilitating a defensive posture which prolonged conflict and hampered compliance.

Results suggest a greater need for studies of social policy litigation to systematically investigate variations not only in the nature and degree of orders in specific types of social policy cases but also in the interactions between defendants, plaintiffs, and judges which influence the remedy-crafting process. It is possible to identify critical factors that vary across different cases and policy issues, and it is possible to devise more precise measures that capture this rich variation. Court documents and records provide a rich but largely untapped source for the codification and validation of such measures. Too often, court documents are used only to construct chronological histories of case events, with little attention to more general processes that may be operating. Linkages between actions at the liability stage and the remedy stage have rarely been examined, nor have linkages between core remedies and extensive postdecree negotiations, modifications, and degree of compliance.

Postdecree Stage

Jail lawsuits, like other remedial decree cases, involve polycentric problems and present considerable difficulties for defining or obtaining compliance. Not surprisingly, such lawsuits last a very long time. While the nature and number of remedies influence litigant and judicial behavior in the postdecree stage, there is no simple relation between remedies and long-term outcomes. Judicial methods and litigant behavior interactively shape modifications, further negotiations, and compliance in a complex manner. Such linkages have rarely been explored, partly due to methodological difficulties in defining and mapping the terrain, and partly due to lack of attention to systematic processes across cases.

Lawsuit duration is itself difficult to define. It is not always clear at which point defendants are in "substantial" compliance with remedial orders or at what point the court does or should disengage. Judges sometimes define very specific standards and time parameters for compliance. In other cases, the conditions required for disengagement of the court are nebulous. Such conditions as jail overcrowding may change, creating new issues or new problems not only during the case but long after defendants were thought to be essentially in compliance.

Judicial methods and plaintiffs' and defendants' litigation strategies have important effects on compliance efforts in the postdecree stage. Type of court was the strongest predictor of lawsuit duration in this study, although the involvement of

county supervisors was also influential. Federal judges may possess greater experience in remedial decree cases and show greater persistence and independence from environmental constraints than state court judges. Government defendants have a variety of methods at their disposal for resisting or delaying compliance (Cooper 1988), including refusal to submit required plans or the filing of an inadequate plan. Defendants may also submit undifferentiated, multiple plans which allow them to claim compliance but force judges and plaintiff counsel to wade through and critically evaluate complex plans. In some cases, defendants may submit "leverage" plans: these are plans local governments lack the will or resources to implement but use to pressure state or federal governments for additional resources. Ideological attorneys, on the other hand, tend to show great persistence in seeking compliance, and may possess the skills and experience to recognize "stonewalling" or leverage motives of defendants.

Judges adopt different roles toward remedy crafting and monitoring compliance, and they may do so at different stages of a case. Early in the remedy-crafting stage, judges may adopt a facilitator role, attempting to stimulate plans and negotiations between litigants (Cooper 1988). Over time, however, judges often find it necessary to set limits as negotiations succeed in some areas and fail in others. Judges may shift toward a more active ratifier/developer role whereby they ratify some plans presented by litigants but begin adding their own modifications or remedies. However, judicial options may be limited when resistance by defendants is pronounced, leading to potential conflict and a more autocratic role.

An underexamined judicial method of monitoring compliance in complex social policy cases is the appointment of a special master. Special masters may assume diverse roles in the postdecree stage, including those of fact-finder, mediator, and negotiator. The considerable influence and flexibility of special masters in some cases challenge commonly held assumptions that judges must assume a "generalist" position; that legal reasoning is nonprobabilistic and absolute; and that judicial decisionmaking is "piecemeal" rather than comprehensive (Horowitz 1977).

Conclusion

Comparative, multimethod assessments of court intervention can facilitate fine-tuned distinctions among social policy cases along multiple dimensions of process and outcome, and lead to development of a more cumulative body of theory. Elaboration and refinements of model constructs should be further investigated. For example, other contingencies (e.g.,

personal characteristics of judges and litigants; interorganizational relations between county agencies) may mediate litigation onset, process, and outcomes. Better measures of contextual variables (e.g., judicial methods) could be constructed and validated; larger samples of lawsuits would strengthen statistical analyses; hypotheses generated by the model could be tested in other jurisdictions and across different policy issues; and potential linkages between model variables and long-term impacts provide ripe areas for further investigation. Also, because litigation is a dynamic process, the degree to which specific factors assume greater or lesser degrees of influence at different stages of litigation should be further examined.

The model of social policy litigation developed in this study allowed for the description of variation in jail reform lawsuits and facilitated the elaboration and testing of theory on court-ordered reform. By expanding empirical and conceptual horizons, we can better assess how court intervention begins, proceeds, and ends and how it leads to various degrees of change in different social arenas.

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