EDWARDS V. BALISOK—IS THE COURT WASHING ITS HANDS OF PRISONERS' DUE PROCESS RIGHTS?

The Fourteenth Amendment's guarantee of procedural due process[1] ensures a person's opportunity to be heard when faced with the deprivation of life, liberty, or property.[2] Due process, as applied

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[1] *See* U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law . . . ." *Id.* Procedural due process is defined as "the guarantee of procedural fairness." BLACK'S LAW DICTIONARY 1203 (6th ed. 1990). Essentially, procedural due process "guarantee[s] those procedures which are required for the 'protection of ultimate decency in a civilized society.'" LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW § 10-8, at 678 (2d ed. 1988) (quoting Adamson v. California, 332 U.S. 46, 61 (1947) (Frankfurter, J., concurring)). Due process has been portrayed as "a principle basic to our society." Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring). It is important to note that procedural due process is not exclusive to the Fourteenth Amendment. *See* U.S. CONST. amend. V. The Fifth Amendment was the original location of the phrase, "No person shall be . . . deprived of life, liberty, or property, without due process of law . . . ." *Id.* The Due Process Clause of the Fifth Amendment, however, only applies to the federal government. *See* TRIBE, *supra*, § 10-7, at 664. The Fourteenth Amendment's Due Process Clause protects individuals from the actions of state governments. *See id.* at 663-64.

The Due Process Clause also encompasses substantive rights and is known in that capacity as substantive due process. *See* Rosalie Berger Levinson, *Protection Against Government Abuse of Power: Has the Court Taken the Substance out of Substantive Due Process*, 16 U. DAYTON L. REV. 313, 313-14 (1991). Substantive due process has been used to establish rights not found explicitly in the Constitution itself, but determined by the Court to be fundamental. *See id.* at 314; *see also* Erwin Chemerinsky, *The Supreme Court and the Fourteenth Amendment: The Unfulfilled Promise*, 25 LOY. L.A. L. REV. 1143, 1149 (1992) (explaining that substantive due process examines the government's justifications for intrusions on individuals' rights).

[2] *See* TRIBE, *supra* note 1, § 10-8, at 683. It is recognized that "[i]f life, liberty or property is at stake, the individual has a right to a fair procedure." JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW § 13.1, at 510 (5th ed. 1995). The Supreme Court has explained that "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)); *see also* Fuentes v. Shevin, 407 U.S. 67, 80 (1972) (stating that procedural due process at its minimum provides an entitlement to be heard when a party's rights may be affected).

While some people might surmise that the words "life, liberty, or property" are broadly inclusive, the Supreme Court has interpreted the phrase quite restrictively. *See* NOWAK & ROTUNDA, *supra*, § 13.2, at 511. The Court has held that, provided due process is followed, the government can deprive a person of life as a penalty for

to liberty interests,[3] essentially promises that no person will be imprisoned or physically restrained by the government unless fair procedures[4] are accorded.[5] This right extends to an individual who has

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committing murder. *See* Gregg v. Georgia, 428 U.S. 153, 187 (1976).

Further, the Court has found it difficult to ascribe an exact meaning to "liberty" and "property." *See* NOWAK & ROTUNDA, *supra*, §13.4, at 518. Interestingly, the Court has been willing to look within the Constitution itself to find distinct liberty interests. *See* TRIBE, *supra* note 1, §10-8, at 680. In addition, the Court has been willing to look beyond the express language of the Constitution in defining liberty interests. *See id.* at 679. Not only do liberty interests include freedom from physical restraint, but they also include the individual's right to contract, to employment, to an education, to marry, to have a family, and to worship God as one sees fit. *See* Meyer v. Nebraska, 262 U.S. 390, 399 (1923). Conversely, the Court has been unwilling to interpret the Constitution as giving a direct definition to the term "property interests." *See* TRIBE, *supra* note 1, § 10-8, at 680. Nonetheless, the Court has recognized that when the government deprives a person of a possession or of a use of property, due process is required. *See id*; *see also* Pennoyer v. Neff, 95 U.S. 714, 733-34 (1877) (finding that a procedural due process question exists in an action to repossess land).

[3] *See* BLACK'S LAW DICTIONARY 918 (6th ed. 1990). Liberty interests are defined as

> interest[s] recognized as protected by the due process clauses of state and federal constitutions .... Generally included are liberties guaranteed by the first eight amendments of the United States Constitution, as well as interests created when states either legislatively or administratively impose limitations on their discretion and require that a specific standard prevail in decision making.

Id. (citations omitted).

[4] *See* Daniels v. Williams, 474 U.S. 327, 337 (1986) (Stevens, J., concurring) (declaring that "the State may not execute, imprison, or fine a defendant without giving him a fair trial, nor may it take property without providing appropriate procedural safeguards"); *see also* Zinermon v. Burch, 494 U.S. 113, 125 (1990) (explaining that fair procedure is a guarantee of the Due Process Clause).

[5] *See* NOWAK & ROTUNDA, *supra* note 2, § 13.4, at 519. The Bill of Rights enumerates procedural safeguards for criminal defendants. *See id.* § 13.9, at 557. Many of these procedures also apply to state governments by virtue of the Fourteenth Amendment's Due Process Clause. *See* Paul v. Davis, 424 U.S. 693, 710 n.5 (1976); *see also, e.g.*, Schilb v. Kuebel, 404 U.S. 357, 365 (1971) (recognizing that the states follow the Eighth Amendment's prohibition of excessive bail); Benton v. Maryland, 395 U.S. 784, 787 (1969) (applying the Fifth Amendment's Double Jeopardy Clause to the states); Duncan v. Louisiana, 391 U.S. 145, 149 (1968) (stating that the Sixth Amendment right to a jury trial in criminal cases is applicable to the states); Klopfer v. North Carolina, 386 U.S. 213, 222 (1967) (compelling the states to follow the speedy and public trial requirements of the Sixth Amendment); Pointer v. Texas, 380 U.S. 400, 406 (1965) (finding that the states must recognize the right to confront opposing witnesses); Malloy v. Hogan, 378 U.S. 1, 3 (1964) (holding that under the Fifth Amendment the states must prohibit compelled self-incrimination); Gideon v. Wainwright, 372 U.S. 335, 339 (1963) (incorporating the Sixth Amendment right to counsel to the states); Fiske v. Kansas, 274 U.S. 380, 387 (1927) (compelling the states to adhere to the First Amendment's guarantees of free speech, press, and religion). In addition, state-created liberty interests are protected by the Fourteenth Amendment's procedural guarantees. *See Davis*, 424 U.S.

already been convicted and may be deprived only as permitted by statute.[6]

One remedy for the deprivation of Fourteenth Amendment due process rights is 42 U.S.C. § 1983.[7] Section 1983 provides relief, both

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at 710-11; *see also* Morrissey v. Brewer, 408 U.S. 471, 482 (1972) (explaining that due process requires that procedural safeguards be implemented before a state changes the status of a parolee); Bell v. Burson, 402 U.S. 535, 539 (1971) (concluding that because it is a state-created right to operate a motor vehicle, a state cannot revoke a driver's license without due process).

[6] *See* NOWAK & ROTUNDA, *supra* note 2, § 13.9, at 559. A prisoner is not deprived of his constitutional protections when imprisoned for a crime. *See* Wolff v. McDonnell, 418 U.S. 539, 555 (1974); *see also* Courtney v. Bishop, 409 F.2d 1185, 1187 (8th Cir. 1969) (maintaining that those civil rights that are fundamental follow a convict "through the prison gate"). The Court declared, "There is no iron curtain drawn between the Constitution and the prisons of this country." *Wolff*, 418 U.S. at 555-56. It was not until the late 1960s, however, that due process rights were explicitly extended to prisoners. *See* Howard B. Eisenberg, *Rethinking Prisoner Civil Rights Cases and the Provision of Counsel*, 17 S. ILL. U. L.J. 417, 422-23 (1993). Only in the latter half of this century have federal courts scrutinized prisoners' rights cases with due process goals in mind. *See id.* at 422-24. Prisoners can now be deprived of life, liberty, or property only if due process is applied. *Cf.* Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (per curiam); Wilwording v. Swenson, 404 U.S. 249, 249, 251 (1971) (per curiam) (permitting prisoners to bring a due process claim regarding conditions of their confinement).

Procedural due process also applies to liberty interests that are created by regulations and statutes that control prison operations. *See* Douglas W. Dunham, Note, *Inmates' Rights and the Privatization of Prisons*, 86 COLUM. L. REV. 1475, 1482 (1986); *see also* Hewitt v. Helms, 459 U.S. 460, 472 (1983) (finding that state prison regulations created a liberty interest); Greenholtz v. Inmates of the Neb. Penal & Correctional Complex, 442 U.S. 1, 12, 16 (1979) (determining that a state parole statute created a liberty interest and required some degree of procedural due process). In determining what due process is required, "The precise safeguards . . . vary according to the weight of the inmate's interests and the weight of the government's interests, particularly the government's need to maintain order, discipline, and control within the correctional facility." Dunham, *supra*, at 1482 (footnote omitted).

[7] *See* 42 U.S.C. § 1983 (1994). Section 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Id. Originally, § 1983 appeared in the Civil Rights Act of 1871 passed by the 42nd Congress. *See* Michael K. Cantwell, *Constitutional Torts and the Due Process Clause*, 4 TEMP. POL. & CIV. RTS. L. REV. 311, 311 (1995). The 1871 Act was passed in response to the inability of state authorities to combat random violence in the South during Reconstruction. *See id.* Commonly, this section was known as the Ku Klux Klan Act, as its purpose was to combat the Klan's campaign of violence. *See* Susanah M. Mead, *Evolution of the "Species of Tort Liability" Created by 42 U.S.C § 1983: Can Constitutional Tort be Saved from Extinction?*, 55 FORDHAM L. REV. 1, 15 (1986). Congress intended that the statute would protect individuals' liberty interests by provid-

injunctive[8] and monetary,[9] from violations of constitutionally protected liberty interests.[10] Currently prisoners can use § 1983 to rem-

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ing a federal forum to redress constitutional violations. *See id.* at 17.

The post-Civil War Court indicated through a series of decisions that the words "under color of state law" would apply only to official state action. *See* Harry A. Blackmun, *Section 1983 and Federal Protections of Individual Rights—Will the Statute Remain Alive or Fade Away?*, 60 N.Y.U. L. REV. 1, 10 (1985) (recognizing that although the Court did not explicitly hold that § 1983 applied only to state actions, it was clear that the Court's "thinking and direction" supported this requirement). The statute then remained dormant for almost a century until the United States Supreme Court decided *Monroe v. Pape*, 365 U.S. 167 (1961), extending its scope to include both authorized and unauthorized actions by state officials. *See* Cantwell, *supra*, at 312. In *Monroe*, the Court decided for the first time that when a city police officer engages in an illegal and unauthorized act, he is acting under color of law, and 42 U.S.C. § 1979 (current version at 42 U.S.C. § 1983 (1994)) applies. *See Monroe*, 365 U.S. at 172.

Suits brought under § 1983 have extended since *Monroe* to include claims of "constitutional deprivations based on violations of the First, Fourth, Fifth, Eighth, and Fourteenth Amendments, as well as a variety of federal statutes." Cantwell, *supra*, at 312 (footnotes omitted). Most of the alleged violations of liberty interests, however, challenge existing state procedures and thus stem from the Fourteenth Amendment's Due Process Clause. *See* Daniel Steiner, Note, *Due Process and Section 1983: Limiting* Parratt v. Taylor *to Negligent Conduct*, 71 CAL. L. REV. 253, 261 (1983).

In order to prove a § 1983 violation, the Court has required a showing that a state actor, acting under color of state law, deprived an individual of a constitutionally protected right. *See* Parratt v. Taylor, 451 U.S. 527, 535 (1981), *overruled by Daniels*, 474 U.S. at 330-31 (overruling *Parratt* on other grounds); Gomez v. Toledo, 446 U.S. 635, 640 (1980) (setting forth the two allegations required in a § 1983 complaint: that an individual has been deprived of a federal right and that "the person who has deprived him of that right acted under color of state or international law"). Justice Brennan has stated:

> In the language of the statute, the elements of a § 1983 cause of action might be summarized as follows: The plaintiff must prove that (1) a person (2) acting under color of state law (3) subjected the plaintiff or caused the plaintiff to be subjected (4) to the deprivation of a right secured by the Constitution or laws of the United States.

City of Oklahoma v. Tuttle, 471 U.S. 808, 829 (1985) (Brennan, J., concurring); *see also* Steiner, *supra*, at 260 (emphasizing that courts must scrutinize a complainant's § 1983 claim by determining whether there is an alleged deprivation of a right).

[8] *See, e.g., Wilwording*, 404 U.S. at 251 (permitting prisoners to bring § 1983 claims seeking injunctive relief regarding the conditions of their confinement).

[9] *See, e.g.*, Carey v. Piphus, 435 U.S. 247, 254 (1978) (acknowledging that § 1983 damage awards result in compensating persons for injuries sustained when deprived of constitutional rights); 15 AM. JUR. 2D *Civil Rights* § 16 (1976) (explaining that the issue of damages under § 1983 is controlled by federal common law).

[10] *See* Mead, *supra* note 7, at 1. Professor Mead notes that these functions are "typically served by tort liability." *Id.* Indeed, even the United States Supreme Court has determined that § 1983 was intended to "create a species of tort liability" in favor of individuals who are denied "rights, privileges, or immunities secured" under the Constitution. Imbler v. Pachtman, 424 U.S. 409, 417 & n.10 (1976); *see also Monroe*, 365 U.S. at 187 (instructing that 42 U.S.C. § 1979 (current version at 42

edy injuries sustained in violation of their due process rights,[11] but the judicial trend has been to set limits on prisoners' claims brought under that statute.[12]

U.S.C. § 1983 (1994)) "be read against the background of tort liability that makes a man responsible for the natural consequences of his actions.").

One major advantage to bringing suit under § 1983 rather than a regular civil suit alleging a constitutional violation is that, under § 1983, courts allow for recovery of attorneys' fees by a victorious plaintiff. *See* W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 119, at 886 (5th ed. 1984).

[11] *See* 21A AM. JUR. 2D *Criminal Law* § 1027 (1981). Under the traditional rules of common law, prisoners could not sue. *See id.* Today, this bar no longer applies. *See id.* The Supreme Court in 1964 ruled that prisoners may bring civil rights claims in federal court under 42 U.S.C. § 1983. *See* Cooper v. Pate, 378 U.S. 546, 546 (1964) (per curiam); *see also* Robert G. Doumar, *Prisoners' Civil Rights Suits: A Pompous Delusion*, 11 GEO. MASON U. L. REV. 1, 4 (1988). The Court decided, in a one-paragraph opinion, to change history and allow a prisoner to sue prison officials under § 1983. *See Cooper*, 378 U.S. at 546; *see also, e.g.*, Washington v. Harper, 494 U.S. 210, 218 (1990) (ruling on the merits of a prisoner's § 1983 claim challenging the due process of state procedures that required treatment with anti-psychotic drugs); Board of Pardons v. Allen, 482 U.S. 369, 381 (1987) (permitting prisoners to bring § 1983 claims challenging the due process of parole board hearings); *Wolff*, 418 U.S. at 542-43 (addressing the merits of prisoners' claims under § 1983 that challenge the validity of prison disciplinary procedures for revoking good-time credits).

Section 1983 claims by the incarcerated have risen considerably in the last two decades. *See* Doumar, *supra*, at 10. Some would say the flood of suits is in direct response to the lack of judicial attention to prisoners' rights in the past. *See* William Bennett Turner, *When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts*, 92 HARV. L. REV. 610, 657 (1979) (noting that the "current rash of section 1983 suits is a reaction" to the more permissive attitude toward prisoner § 1983 actions). The rise in prisoner § 1983 claims is also due in large part to the relationship between a prisoner and the state. *See* Preiser v. Rodriguez, 411 U.S. 475, 492 (1973). The Court has explained that "[w]hat for a private citizen would be a dispute with his landlord, with his employer, with his tailor, with his neighbor, or with his banker becomes, for the prisoner, a dispute with the State." *Id.*

The statistics reveal that, while in 1966 there were only 218 prisoner civil rights cases, by 1995 over 41,600 prisoner civil rights cases filled the federal dockets. *See* Dorothy Schrader, *Prisoner Civil Rights Litigation and the 1996 Reform Act*, CONGRESSIONAL RESEARCH REPORT, No. 96-468A, CRS-5 (1996) [hereinafter CONGRESSIONAL REPORT]. These numbers suggest that "[p]risoner civil rights litigation constitutes the largest category of federal civil rights cases, 17% of district court civil cases, and 22% of civil appeals." *Id.* at CRS-17, 18. Some scholars complain that these claims are causing a drain on court resources. *See* Wayne T. Westling & Patricia Rasmussen, *Prisoner's Access to the Courts: Legal Requirements and Practical Realities*, 16 LOY. U. CHI. L.J. 273, 303 (1985). *But see* Mead, *supra* note 7, at 10 (finding that the federal system has not been unduly burdened by this increase, nor is the responsibility of the legal system to protect individuals' interests lessened). Eighth Circuit Judge Henley lamented the overuse of § 1983 prisoner suits by saying, "inmates have essentially nothing to lose, including time, by prosecuting such actions, and they may gain something even if it is nothing but the satisfaction of harassing, inconveniencing and annoying those who have them in charge." Wycoff v. Brewer, 572 F.2d 1260, 1267 (8th Cir. 1978).

Recently, in *Edwards v. Balisok*,[13] the United States Supreme Court considered whether limits should be placed on § 1983 claims brought by prisoners seeking damages and declaratory relief for alleged violations of procedural due process rights in prison disciplinary hearings.[14] The Court restricted prisoners' § 1983 claims by holding that if the allegations necessarily suggest the invalidity of the sanctions imposed by the disciplinary hearing, the claim is not cognizable.[15]

On September 2, 1993, Jerry Balisok[16] was found guilty, after a prison disciplinary hearing, of four prison infractions.[17] As part of

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[12] *See* Doumar, *supra* note 11, at 11. In 1973, the Supreme Court severely restricted prisoners' § 1983 claims by concluding that such actions could not be brought in place of habeas corpus petitions. *See id.*; *see also Preiser*, 411 U.S. at 500. *Preiser* held that convicts could not challenge the fact or duration of their confinement using § 1983. *See id.* Subsequent decisions, however, have permitted prisoners to make due process challenges to prison disciplinary procedures. *See Wolff*, 418 U.S. at 554-55.

The due process rights of the incarcerated have been valued differently than those of most citizens because there is a limit on prisoners' constitutional rights. *See* NOWAK & ROTUNDA, *supra* note 2, § 13.9, at 562. The Supreme Court only requires minimally fair procedures when a prisoner faces severe and formal disciplinary actions. *See id.* at 563. Because "[p]rison disciplinary proceedings are not part of a criminal prosecution . . . the full panoply of rights due a defendant in such proceedings does not apply." *Wolff*, 418 U.S. at 556; *see also* Courtney v. Bishop, 409 F.2d 1185, 1188 (8th Cir. 1969) (deciding not to interfere where there was no deprivation of a prisoner's fundamental constitutional right); Mahers v. State, 437 N.W.2d 565, 568 (Iowa 1989) (holding that at a disciplinary hearing, the due process rights of a prisoner do not necessarily permit him to call witnesses in his defense if doing so would be dangerous to correctional goals or institutional safety); *In re* Reismiller, 678 P.2d 323, 325 (Wash. 1984) (limiting review of prison disciplinary proceedings so as to avoid undermining prison administration decisions).

Although prisoners' suits under § 1983 are often limited, adequate remedy may still exist under habeas corpus. *See* Eric J. Savoy, Comment, Heck v. Humphrey: *What Should State Prisoners Use When Seeking Damages from State Officials . . . Section 1983 or Federal Habeas Corpus?*, 22 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 109, 116 (1996). An important difference between the two remedies is that habeas corpus seeks release from an alleged unlawful confinement whereas § 1983 seeks relief in the form of monetary damages. *See id.* The Supreme Court has stated: "[W]hen a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." *Preiser*, 411 U.S. at 500.

[13] 117 S. Ct. 1584 (1997).

[14] *See id.* at 1586.

[15] *See id.* at 1589. The Court found Balisok's claim "necessarily impl[ied] the invalidity of the punishment imposed" because he alleged bias and deceit by a prison official. *Id.*

[16] *See id.* at 1586. Balisok is incarcerated in a state penitentiary in Walla Walla, Washington. *See id.* Balisok, also known as Ricky Wetta, is currently serving an exceptional sentence of 20 years for first degree attempted murder. *See* State v. Bali-

his sentence, Balisok was forced to forfeit thirty good-time credit days he had earned while in prison.[18] These good-time credits would have

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sok, 866 P.2d 631, 631 & n.1, 632 (Wash. 1994) (en banc).

In the State of Washington, if a jury considers extrinsic evidence in determining a defendant's guilt or innocence, it is grounds for remand and a new trial. *See id.* at 633. Extrinsic evidence is defined as "'information that is *outside all the evidence* admitted at trial, either orally or by document.'" *Id.* (alteration in original) (quoting Richards v. Overlake Hosp. Med. Ctr., 796 P.2d 737, 741 (Wash. Ct. App. 1990)). The defense strategically acted out Balisok's version of the events for the jury. *See id.* at 632. During deliberations, the jurors tried to recreate the scene and movements themselves as the defense had described. *See id.* These reenactments played a vital role in the jury's determination of guilt. *See id.* at 633. The appellate court found the reenactments to be extrinsic evidence and the creation of new evidence not subject to rebuttal by the parties. *See id.* at 634 (citing State v. Balisok, 843 P.2d 1086, 1091 (Wash. Ct. App. 1993)).

The Supreme Court of Washington reinstated both the judgment and the sentence of the trial court after the court of appeals remanded the case due to jury misconduct. *See id.* at 633, 634. In reversing the court of appeals, the Supreme Court of Washington determined that the jury did not consider any evidence outside of what was presented at trial. *See id.* at 633. The court allowed the conviction to stand by finding that the jury reenactments did not constitute extrinsic evidence, as they were merely a critical examination of the defense theory. *See id.* at 633-34.

[17] *See Edwards*, 117 S. Ct. at 1586. Washington State Penitentiary officials enforce a disciplinary code setting forth the scope of prison misconduct and the penalties for such misconduct. *See* WASH. ADMIN. CODE §§ 137-28-260, -270 (1997). When a prisoner commits an infraction, there are certain procedures that must be followed pursuant to state law. *See id.* § 137-28-270. First, an infraction report must be prepared and submitted by the staff member who is made aware of the infraction. *See id.* § 137-28-270(1). This report is generally forwarded to the hearing clerk and is subsequently passed on to the hearing officer. *See id.* § 137-28-270(3). A prisoner may be placed in temporary prehearing confinement if there is a reasonable belief that a dangerous safety risk is involved. *See id.* § 137-28-280(1). Prior to the disciplinary hearing, the inmate must be given a plethora of due process protections including 24-hour notice, copies of the report, and written advisement of his due process rights regarding the hearing. *See id.* § 137-28-290.

[18] *See Edwards*, 117 S. Ct. at 1586. In the State of Washington, a prisoner can earn good-time credits while incarcerated pursuant to the Revised Code of Washington. *See* WASH. REV. CODE ANN. § 9.95.070 (West 1988). The statute provides:

> Every prisoner who has a favorable record of conduct at the penitentiary or the reformatory, and who performs in a faithful, diligent, industrious, orderly and peaceable manner the work, duties, and tasks assigned to him to the satisfaction of the superintendent of the penitentiary or reformatory, and in whose behalf the superintendent of the penitentiary or reformatory files a report certifying that his conduct and work have been meritorious and recommending allowance of time credits to him, shall upon, but not until, the adoption of such recommendation by the board of prison terms and paroles, be allowed time credit reductions from the term of imprisonment fixed by the board of prison terms and paroles.

Id. Inmates who refrain from committing serious infractions are rewarded with good-time credits. *See* Gotcher v. Wood, 66 F.3d 1097, 1099 (9th Cir. 1995), *cert. granted and judgment vacated*, 117 S. Ct 1840 (1997). For every 30 days of time served, a prisoner is entitled to no more than 10 days of credit. *See id.* Further-

been applied towards reducing his term of imprisonment.[19] In response to these sanctions, Balisok appealed within the prison system,[20] but his appeal failed due to procedural defects.[21]

In January 1994, Balisok filed a § 1983 petition against prison officials Gary Edwards and Tana Wood,[22] claiming that the procedures used in the disciplinary hearing that deprived him of his good-time credits violated due process.[23] Balisok's complaint sought declaratory and injunctive relief,[24] as well as compensatory and punitive

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more, the Supreme Court of Washington has declared that the Fourteenth Amendment requires minimal due process if a prisoner is to be deprived of his state-created "liberty interest" in his good-time credits. *See In re* Piercy, 681 P.2d 223, 226 (Wash. 1984) (en banc).

In addition to the loss of good-time credits, Balisok also received 10 days in isolation as well as 20 days in segregation for his infraction. *See Edwards*, 117 S. Ct. 1586. All three sanctions were handed down pursuant to the prison disciplinary code. *See* WASH. ADMIN. CODE § 137-28-350 (1997). There are limits placed on prison officials in enforcing these punishments, however, because a prisoner cannot be confined in an environment that is dangerous to his health. *See id.* § 137-28-370.

[19] *See Edwards*, 117 S. Ct. at 1586.

[20] *See id.* The intersystem appeal must be filed within 24 hours of the prisoner receiving notice of the hearing officer's decision. *See* WASH. ADMIN. CODE § 137-28-380 (1997). The superintendent must then act within ten days of receipt of the appeal. *See id.* The disciplinary sanctions are not imposed on the inmate during the pendancy of the superintendent's decision. *See id.*

[21] *See Edwards*, 117 S. Ct. at 1586. Balisok's administrative appeal was simply too long. *See* Brief of Respondent at 2, Edwards v. Balisok, 117 S. Ct. 1584 (No. 95-1352).

[22] *See Edwards*, 117 S. Ct. at 1586; *see also* Brief of Respondent at 3, 4, Edwards v. Balisok, 117 S. Ct. 1584 (No. 95-1352) (explaining that Gary Edwards was the disciplinary hearing officer involved in Balisok's case and that Tana Wood was the superintendent to whom Balisok made his administrative appeal).

[23] *See Edwards*, 117 S. Ct. at 1586. Balisok made allegations of two due process violations. *See id.* First, he asserted that Edwards intentionally and unlawfully refused him the right to present witness statements on his behalf. *See* Brief of Respondent at 2, Edwards v. Balisok, 117 S. Ct. 1584 (No. 95-1352). Second, Balisok contended that Wood's unwillingness to explain her denial of his appeal made it impossible for him to be granted judicial review of the proceedings. *See id.*

[24] *See Edwards*, 117 S. Ct. at 1586; *see also* BLACK'S LAW DICTIONARY 409, 784 (6th ed. 1990) (defining declaratory relief as "remedy for the determination of a justiciable controversy where the plaintiff is in doubt as to his legal rights" and injunctive relief as "[a] court order prohibiting someone from doing some specified act"). Balisok's amended complaint specifically requested "a declaration that the procedures employed by state officials violated due process." *Edwards*, 117 S. Ct. at 1586. Moreover, Balisok desired an injunction to protect future claimants from similar violations. *See id.* Balisok contended that prison officials regularly and purposely failed to date-stamp witness statements made for disciplinary hearings. *See id.* at 1589. The amended complaint requested injunctive relief mandating that prison officials appropriately date-stamp witness statements. *See id.* Balisok did not, however, request that his lost good-time credits be restored. *See id.* at 1586-87. Instead, he reserved his right to do so in state court. *See id.* at 1587.

damages,[25] for injuries sustained due to the alleged violation of his constitutional rights.[26] The United States District Court for the Eastern District of Washington held that pursuant to *Heck v. Humphrey*,[27] Balisok's claim was not cognizable under § 1983.[28]

On appeal, the United States Court of Appeals for the Ninth Circuit reversed the judgment of the district court.[29] The circuit court held that this type of claim is always cognizable and further held that *Heck* did not control because Balisok's petition did not question the legitimacy of his continuing imprisonment.[30] Rather, the court found that because Balisok challenged only the procedures

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[25] *See Edwards*, 117 S. Ct. at 1586. Compensatory damages are defined as damages that will simply "compensate the injured party for the injury sustained." BLACK'S LAW DICTIONARY 390 (6th ed. 1990). Punitive damages are defined as an award over and above compensation, the purpose of which is to punish the defendant for the injury to the victim. *See id.*

[26] *See Edwards*, 117 S. Ct. at 1586.

[27] 512 U.S. 477 (1994).

[28] *See Edwards*, 117 S. Ct. at 1587. *Heck* established that in order for a plaintiff to bring a § 1983 claim seeking damages for an unconstitutional conviction or an invalid sentence, the conviction or sentence must first be proven to have been previously invalidated. *See Heck*, 512 U.S. at 486-87. For an in-depth discussion of *Heck*, see *infra* notes 76-85 and accompanying text.

The district court extended *Heck*'s holding to include § 1983 claims brought by individuals already incarcerated to challenge internal prison proceedings. *See Edwards*, 117 S. Ct. at 1587. Despite the holding, the court decided to stay the action pending exhaustion of state remedies rather than dismiss the suit. *See id.* Pursuant to 28 U.S.C. § 1292(b) the court authorized an immediate appeal, permitting Balisok to challenge this ruling at the appellate level. *See id.*; *see also* 28 U.S.C. § 1292(b) (1994) (empowering district judges upon their discretion to permit an interlocutory appeal when an unsettled question of law is controlling).

[29] *See* Balisok v. Edwards, 70 F.3d 1277 (9th Cir. 1995) (unpublished table decision).

[30] *See Edwards*, 117 S. Ct. at 1587. In so holding, the court followed a previous Ninth Circuit decision, *Gotcher v. Wood*, 66 F.3d 1097, 1099 (9th Cir. 1995), *cert. granted and judgment vacated*, 117 S. Ct. 1840 (1997). *See Edwards*, 117 S. Ct. at 1587. In *Gotcher*, the federal appeals court held that a prisoner's § 1983 due process challenge to a disciplinary procedure, the result of which deprived him of good-time credits, did not fall under *Heck* as a challenge to the lawfulness of his confinement. *See Gotcher*, 66 F.3d at 1099. Moreover, the court decided that a challenge to the procedures used rather than the result of the disciplinary hearing always qualified as a cognizable § 1983 claim. *See id.* The *Gotcher* court further recognized good-time credits as a constitutionally protected liberty interest. *See id.* at 1100. Because Balisok's claim was essentially identical to Gotcher's, the Ninth Circuit reversed and remanded the case for further proceedings consistent with the *Gotcher* opinion. *See Edwards*, 117 S. Ct. at 1587. On May 27, 1997, the Supreme Court granted certiorari for the *Gotcher* case, yet vacated and remanded in light of *Edwards*. *See* Wood v. Gotcher, 117 S. Ct. 1840 (1997).

used in the prison hearing and not the outcome itself, his § 1983 claim could proceed.[31]

To clarify the limits on inmates' § 1983 petitions regarding prison disciplinary proceedings,[32] the United States Supreme Court granted certiorari.[33] The Court reversed the decision of the Ninth Circuit and extended *Heck* to include claims against prison disciplinary personnel who have imposed sanctions on the incarcerated for violating prison rules.[34] In reaching this decision, the Court concluded that when alleging deceit and bias by the decision-maker,[35] a prisoner cannot bring a § 1983 claim because a favorable ruling would imply that the punishment was invalid.[36]

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[31] *See Edwards*, 117 S. Ct. 1587.

[32] *See id.* at 1586. Although the Court's decisions in *Preiser* and *Heck* resolved much of the confusion surrounding prisoner § 1983 claims, the Supreme Court had never before dealt with the question presented here. *See id.* The Court so framed the issue in *Edwards v. Balisok* as an inquiry into "whether a claim for damages and declaratory relief brought by a state prisoner challenging the validity of the procedures used to deprive him of good-time credits is cognizable under § 1983." *Id.*

In *Preiser*, the question presented was whether good-time credits could be restored through a § 1983 action. *See* Preiser v. Rodriguez, 411 U.S. 475, 476-77 (1973). The Court refused to extend § 1983 so far and held that a writ of habeas corpus was the sole federal remedy for such violation. *See id.* at 500. The Court in *Heck* limited prisoner § 1983 petitions even further by holding that in order for a plaintiff to bring a § 1983 claim seeking damages, the conviction or sentence must first be proven to have been previously invalidated. *See Heck*, 512 U.S. at 486-87. The holding in *Heck*, however, did not specifically reach prison disciplinary proceedings. *See id.*

[33] *See* 116 S. Ct. 1564 (1996).

[34] *See Edwards*, 117 S. Ct. at 1589. In reversing the decision of the United States Court of Appeals for the Ninth Circuit, the Court also found *Gotcher v. Wood* to be in error. *See id.* at 1587. In essence, the Court rejected the circuit court's contention that a procedural challenge to prison disciplinary procedures is always a cognizable § 1983 claim. *See id.*

[35] *See id.* at 1589. Balisok's specific claims of deceit and bias included contentions that Edwards denied the existence of witness statements and purposely denied Balisok the right to present such evidence. *See id.* at 1588. The Court determined that these specific instances of deceit and bias alleged by Balisok, if true, would be grounds for reinstatement of his good-time credits. *See id.* (citing Arizona v. Fulminante, 499 U.S. 279, 308 (1991); Tumey v. Ohio, 273 U.S. 510, 535 (1927)). Furthermore, the Court posited that Balisok's claims of procedural defects would be reason for reversing his punishment. *See id.* (citing Kingsley v. Bureau of Prisons, 937 F.2d 26, 27 (2d Cir. 1991); Mahers v. State, 437 N.W.2d 565, 568-69 (Iowa 1989); Contras v. Coughlin III, 604 N.Y.S.2d 651, 652 (App. Div. 1993)).

[36] *See id.* at 1589. The Supreme Court avoided overruling precedent by distinguishing between claims that call into question the legality of the prisoner's confinement and those that do not. *See id.* at 1587-88. Previously, the Court had held that as a predicate to an award of damages, a court could mandate procedural safeguards for hearings where loss of good-time credits is at issue. *See* Wolff v. McDonnell, 418 U.S. 539, 554-55 (1974). The Court in *Edwards v. Balisok* distinguished

The Supreme Court has long struggled with defining the appropriate boundaries of § 1983 claims brought by prisoners claiming violations of their due process rights.[37] The Court initiated the quandary in *Cooper v. Pate*,[38] a seemingly simple case.[39] In *Cooper*, the Court decided for the first time that a prisoner is entitled to bring a civil rights claim against prison officials under § 1983.[40] Although

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Wolff by reiterating that the allegations in that case did not necessarily question whether the prisoner's confinement was lawful. *See Edwards*, 117 S. Ct. at 1587-88 (quoting *Heck*, 512 U.S. at 482-83).

Because Balisok requested injunctive relief in the form that would not necessarily suggest that his punishment was invalid, the Court left open the possibility that prison officials may be required to date-stamp witness statements as they are received. *See id.* at 1589. The Court remanded so that the lower courts could determine whether the appropriate requirements for injunctive relief had been established. *See id.*

[37] *See* Deborah R. Stagner, Note, Sandin v. Connor*: Redefining State Prisoners' Liberty Interest and Due Process Rights*, 74 N.C. L. REV. 1761, 1767 (1996) (describing the Court's decision in *Monroe v. Pape* as "giving renewed life to the long dormant Civil Rights Act of 1871"); *see also* William Burnham, *Separating Constitutional and Common Law Torts: A Critique and a Proposed Constitutional Theory of Duty*, 73 MINN. L. REV. 515, 519 (1989) (explaining that the Court has had difficulty limiting the scope of remedies for Due Process Clause violations). The Supreme Court initially opened the door for such claims with the benchmark case of *Monroe v. Pape*, 365 U.S. 167 (1961). *See* Stagner, *supra*, at 1767. Although the Court in *Monroe* did not specifically discuss the issue of prisoners' civil rights suits, it was the first time § 1983 was extended to include both authorized and unauthorized actions by state officials. *See Monroe*, 365 U.S. at 172.

The Court remains true to the adage that a prisoner is entitled to claim due process protections, as he is not stripped of the refuge of the Constitution when he is incarcerated for a crime. *See Wolff*, 418 U.S. at 555-56. Yet the Court has seriously restrained a prisoner's ability to claim a civil rights violation by restricting the type of relief available for such a claim. *See Edwards*, 117 S. Ct. at 1589; *Heck*, 512 U.S. at 486-87; Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). It has been difficult for the Court to find a balance between the constitutional protections afforded to prisoners and the judicial compulsion to dispose quickly of prisoners' civil rights actions. *See* Doumar, *supra* note 11, at 7.

[38] 378 U.S. 546 (1964) (per curiam).

[39] *See* Doumar, *supra* note 11, at 6.

[40] *See* James E. Robertson, *The Decline of Negative Implication Jurisprudence: Procedural Fairness in Prison Discipline after* Sandin v. Conner, 32 TULSA L.J. 39, 45 n.46 (1996). The prisoner in *Cooper* alleged that his warden would not permit him to purchase religious publications or engage in privileges that other prisoners enjoyed. *See* Cooper v. Pate, 324 F.2d 165, 166 (7th Cir. 1963). The United States District Court for the Northern District of Illinois, Eastern Division, dismissed the civil rights petition. *See id.* On appeal, the Seventh Circuit upheld the decision of the district court by expressing that federal courts were unable to intervene in matters involving internal prison determinations. *See id.* at 167. The United States Supreme Court reversed the Seventh Circuit in a one-paragraph order. *See Cooper*, 378 U.S. at 546. Essentially, the Court concluded that the prisoner's complaint stated a cause of action. *See id.* With this one opinion, the Court triggered a surge of prisoners' § 1983 claims in federal district courts. *See* Doumar, *supra* note 11, at 6.

holding in favor of the prisoner's right to bring the claim, the Court remanded the case to be decided substantively by a lower court.[41]

Nearly a decade later, in *Preiser v. Rodriguez*,[42] the Court began to limit the remedies extended to a prisoner under a § 1983 claim.[43] In *Preiser*, the Supreme Court forbade the restoration of good-time credits by a § 1983 suit.[44] The Court further found that habeas corpus[45] is the sole remedy for a state prisoner's challenge seeking re-

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[41] *See Cooper*, 378 U.S. at 546. The merits of the claim itself were ultimately decided in favor of the prisoner. *See* Cooper v. Pate, 382 F.2d 518, 522 (7th Cir. 1967).

[42] 411 U.S. 475 (1973).

[43] *See id.* at 500.

[44] *See id.* *Preiser* was a consolidated case originally brought by three separate respondents. *See id.* at 477. Due to internal prison disciplinary actions, each inmate had been deprived of his good-time credits. *See id.* at 477-81. All three prisoners brought § 1983 actions and habeas corpus petitions. *See id.* at 478, 480, 481. Each prisoner sought restoration of the good-time credits based on a procedural due process claim. *See id.* In each case, the district court decided that the habeas corpus and civil rights claims were in conjunction with each other and that no exhaustion of state remedies was needed. *See id.* Each court further ruled on the merits for the respective inmate, entitling all three to immediate release on parole. *See id.* at 479, 480, 481. The appellate court consolidated the cases and affirmed the lower courts' decisions. *See id.* at 482. The Supreme Court determined that the sole remedy for each prisoner's claim was a writ of habeas corpus and that recourse under § 1983 was inappropriate. *See id.* at 500. In so holding, the Court set a precedent of refusing to provide injunctive relief in the form of restoration of good-time credits in a prisoner's civil rights action. *See id.* The Court found persuasive the argument that there was already adequate remedy for such a constitutional violation in the habeas corpus statute. *See id.* at 500.

[45] *See* BLACK'S LAW DICTIONARY 709 (6th ed. 1990) (defining habeas corpus as a request brought before a court seeking release from unlawful imprisonment); *see also Preiser*, 411 U.S. at 486 (stating that a writ of habeas corpus is essentially brought by a prisoner attacking the legality of his custody).

The right of a prisoner to seek habeas corpus relief from a federal court derives from two statutes. *See* 28 U.S.C. §§ 2254, 2255 (1994). Section 2254 gives state prisoners a habeas corpus remedy in federal court. *See id.* § 2254(a). The statute permits a federal court to entertain habeas corpus applications from state prisoners claiming that their imprisonment is violative of the Constitution or federal laws. *See id.* Section 2255 establishes habeas corpus relief for prisoners held in federal custody:

> A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Id. § 2255.

lease from his physical imprisonment.[46] In recognizing that Preiser had a possible habeas corpus claim, the Court cautioned that he must exhaust his state remedies before proceeding.[47] The Court noted that a conflict exists between the habeas corpus statute and the § 1983 statute, which contains no exhaustion requirement.[48] This decision was not made without controversy.[49] In a forceful dissent, Justice Brennan, joined by Justices Douglas and Marshall, ex-

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[46] *See Preiser*, 411 U.S. at 500. It is recognized that "the major difference between section 1983 and habeas corpus is that damages *may* be sought under a section 1983 suit, whereas a petitioner in a habeas corpus proceeding would be seeking release from unlawful, unconstitutional confinement." Savoy, *supra* note 12, at 116 (footnotes omitted). The *Preiser* Court determined that, because the challenge at issue was a direct attack on the constitutionality of the inmates' physical confinement—seeking either immediate release or shorter duration—habeas corpus was the appropriate remedy. *See Preiser*, 411 U.S. at 489.

[47] *See Preiser*, 411 U.S. at 490. The Court compared § 1983 to a § 2254 habeas corpus petition, where the applicant must exhaust the available state remedies before applying for a writ of habeas corpus in federal court. *See id.* at 483; *see also* 28 U.S.C. § 2254. The Court explained that the exhaustion requirement of the habeas corpus statute serves the purpose of fostering "federal-state comity." *Preiser*, 411 U.S. at 491; *see also* Younger v. Harris, 401 U.S. 37, 44 (1971) (implying that comity underlies the exhaustion requirement of the federal habeas corpus statute). *Preiser* stressed that the federal judiciary does not have a right to bypass the state in correcting problems exclusive to state expertise. *See Preiser*, 411 U.S. at 492. The Court explained that states must be given an initial opportunity to correct alleged errors in prison administration and that the lack of an exhaustion requirement in § 1983 sabotages that goal. *See id.* The Court therefore decided that § 1983 was an inappropriate place for the petitioners' cause of action. *See id.* at 500. The *Preiser* Court reiterated that a § 1983 action was an appropriate remedy for a challenge to prison conditions, but not for a challenge to the fact or duration of confinement. *See id.* at 499.

The Supreme Court further limited the holding by declaring that the prisoners' remedy defined their claim as one appropriate only for habeas corpus relief. *See id.* at 494. The Court stated that habeas corpus would not be available if the petitioners had sought damages instead of injunctive relief. *See id.* Accordingly, the Court stated that "a damages action by a state prisoner could be brought under the Civil Rights Act in federal court without any requirement of prior exhaustion of state remedies." *Id.*; *see also* Savoy, *supra* note 12, at 114 (remarking that the injunctive remedy Rodriguez sought was important to the Court's finding that the § 1983 suit was improper).

[48] *See* Patsy v. Board of Regents, 457 U.S. 496, 516 (1982) (opining that § 1983 contains no exhaustion requirement). Although in 1973 the *Preiser* Court was correct in finding no legislatively imposed exhaustion requirement under § 1983, Congress has since redefined this mandate. *See* 42 U.S.C.A. § 1997e (West Supp. 1997). Currently, prisoners who bring § 1983 suits with respect to prison conditions must exhaust their administrative remedies first. *See id.* The statute, however, is not applicable beyond prisoner suits challenging prison conditions. *See id.*

[49] *See Preiser*, 411 U.S. at 501 (Brennan, J., dissenting).

pressed regret that the Court was complicating the issue of prisoner § 1983 claims.[50]

In 1974, with the decision in *Wolff v. McDonnell*,[51] the Supreme Court added some clarity to the hazy area of due process rights for prisoners[52] by circumscribing the breadth of process due an inmate in prison disciplinary procedures.[53] In *Wolff*, a Nebraska prisoner filed a § 1983 challenge[54] to many of the rules and routines of the institution,[55] including a due process challenge to prison disciplinary proceedings.[56] The relief sought was both injunctive, in the form of restored good-time credits,[57] and monetary.[58]

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[50] *See id.* Noting that past decisions found cognizable claims similar to those of the petitioners, Justice Brennan expressed that *Preiser* was contrary to precedent. *See id.* at 500-01 (Brennan, J., dissenting) (citing Wilwording v. Swenson, 404 U.S. 249, 251 (1971) (per curium) (holding that a prisoner seeking injunctive relief under § 1983 has a cognizable claim); Monroe v. Pape, 365 U.S. 167, 183 (1961) (ruling that state remedies need not be sought before § 1983 is invoked)). The dissent criticized the Court for drawing an unclear line between habeas corpus remedies and § 1983 remedies. *See Preiser*, 411 U.S. at 505 (Brennan, J., dissenting) (noting that a distinction between a challenge based on the fact or length of confinement and the conditions of prison confinement is spurious). The Justice also maintained that the Court was making rules that would be difficult for pro se plaintiffs, who make up a majority of § 1983 petitions, to understand. *See id.* at 512 (Brennan, J., dissenting).

[51] 418 U.S. 539 (1974).

[52] *See* NOWAK & ROTUNDA, *supra* note 2, §13.9, at 563.

[53] *See Wolff*, 418 U.S. at 558.

[54] *See id.* at 542. On behalf of other inmates at the Nebraska Correctional Complex, McDonnell brought a § 1983 class action suit. *See id.*

[55] *See id.* at 543. The following contentions were included in the inmates' claim: that violations of the Fourteenth Amendment existed in prison disciplinary proceedings, that the legal assistance program for prisoners was not constitutional, and that rules regarding prisoners' correspondence with their attorneys were unconstitutional. *See id.* at 542-43.

[56] *See id.* at 542-43. Specifically, the inmate challenged the removal of good-time credits by the disciplinary hearing officers. *See id.* at 543 n.2. The Nebraska Treatment and Corrections Act governs the administration of prisons in Nebraska. *See* NEB. REV. STAT. § 83-185 (1994) (current version at NEB. REV. STAT. § 83-4, 114.01 (1994)). Good-time credits are awarded pursuant to Nebraska law for exemplary behavior while a person is incarcerated, and these credits are used toward an early release. *See Wolff*, 418 U.S. at 557. Prison officials can revoke these credits as a sanction for major misconduct. *See id.* There are specific procedures established for the removal of good-time credits. *See id.* at 548.

[57] *See Wolff*, 418 U.S. at 543. It is important to note that by the time this petition reached the Supreme Court, the decision in *Preiser* had declared null any entitlement of a prisoner to receive restoration of good-time credits under § 1983. *See* Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

[58] *See Wolff*, 418 U.S. at 543. The United States District Court for the District of Nebraska rejected the procedural due process claim and further found that both the legal assistance program for prisoners and the rules regarding prisoners' corre-

The *Wolff* Court held for the first time that the validity of prison procedures could be determined under § 1983 and remedies for constitutional violations could be fashioned accordingly so long as canceled good-time credits were not restored.[59] The Court further held that good-time credits were a state-created liberty interest, fully embraced by the Fourteenth Amendment's Due Process Clause.[60]

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spondences with their attorneys were constitutional. *See* McDonnell v. Wolff, 342 F. Supp. 616, 622, 625, 627 (D. Neb. 1972). The United States Court of Appeals for the Eighth Circuit reversed the district court's ruling by finding the Supreme Court decisions in *Morrissey v. Brewer* and *Gagnon v. Scarpelli* to be binding on prison disciplinary procedures. *See* McDonnell v. Wolff, 483 F.2d 1059, 1063, 1067 (8th Cir. 1973) (citing Gagnon v. Scarpelli, 411 U.S. 778, 782, 790 (1973) (holding that "a probationer . . . is entitled to a preliminary and a final revocation hearing" and that "the decision as to the need for counsel must be made on a case-by-case basis in the exercise of a sound discretion by the state authority charged with responsibility for administering the probation and parole system."); Morrissey v. Brewer, 408 U.S. 471, 488-89 (1972) (delineating the minimum due process requirements needed for the revocation of parole)). The circuit court remanded the case, however, for the specific requirements to be decided by the court below. *See id.* at 1063. The Supreme Court granted certiorari to determine whether *Preiser* foreclosed the consideration of the procedures used to deprive a prisoner of good-time credits in a § 1983 suit, as well as to make a determination about what procedures are due in a prison disciplinary action. *See Wolff*, 418 U.S. at 542, 554.

[59] *See Wolff*, 418 U.S. at 555. By so holding, the Court determined that *Preiser* did not bar the Court from making an analysis of the procedures employed by prison officials in revoking good-time credits from prisoners as a punishment for violating prison rules. *See id.* at 554-55. The Court further followed *Preiser* by declining to restore good-time credits, the result of which would lead to speedier release, yet permitting the claim for damages to be asserted under § 1983. *See id.* at 554. *Wolff* explained that *Preiser* would not prohibit a declaratory judgment in reference to the procedural due process issues as a predicate to an award of damages. *See id.* at 555. The Court resolved that *Preiser* would not hinder a § 1983 litigant "from obtaining by way of ancillary relief an otherwise proper injunction enjoining the prospective enforcement of invalid prison regulations." *Id.* This is an ambiguous statement because although *Wolff* could be limited to ancillary claims, it could likewise broadly sanction use of § 1983 to enjoin all unconstitutional prison regulations. *See* Martin A. Schwartz, *The* Preiser *Puzzle: Continued Frustrating Conflict Between the Civil Rights and Habeas Corpus Remedies for State Prisoners*, 37 DEPAUL L. REV. 85, 121 (1988).

The Supreme Court decided to determine the due process validity of prison procedures in *Wolff* because of the protections the Constitution guarantees to all citizens, even the incarcerated. *See Wolff*, 418 U.S. at 555-56. Although there was recognition that a prisoner's rights may be limited somewhat because of the institutional environment, the Court refused to find constitutional protections completely stripped from those who were imprisoned. *See id.*

[60] *See Wolff*, 418 U.S. at 557. As the Court noted:

> [T]he State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment "liberty" to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated.

Finally, the Court determined what processes were due in prison disciplinary actions.[61] The Court articulated that Wolff was entitled to written notice of the charges.[62] Further, the Court required the disciplinary factfinder to provide a written statement of the evidence used to justify the disciplinary action.[63]

Later, in *Carey v. Piphus*,[64] the Supreme Court defined the scope of § 1983 actions by drawing a correlation to tort law.[65] Surprisingly,

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Id. at 557; *see also* Colleen Tracy, Note, 27 SETON HALL L. REV. 772, 781-82 (1997) (explaining the importance of *Wolff*'s holding that there exists a state-created liberty interest in good-time credits).

[61] *See Wolff*, 418 U.S. at 563-74 (enumerating at length the procedures required). The Supreme Court found the following disciplinary procedures resulting in the potential imposition of solitary confinement or the loss of good-time credits to be insufficient: (1) a preconference meeting between the charging party and the Chief Corrections Supervisor where the misconduct charge and the merits of the charge were discussed, (2) a hearing before the prison disciplinary body where a conduct report was read to the prisoner, and (3) an opportunity for the prisoner to ask the charging party questions at the hearing. *See id.* at 558-59. After examining the due process requirements of *Morrissey* and *Scarpelli* for the revocation of parole and probation, the Court determined that those due process procedures need not be entirely followed in state prison disciplinary actions. *See id.* at 559-60 (citing *Scarpelli*, 411 U.S. at 790; *Morrissey*, 408 U.S. at 489); *see also supra* note 58 (discussing the holdings of *Morrissey* and *Scarpelli*). The Court explained that constitutional judgments must be structured against the background of prison culture when disciplinary proceedings are at issue. *See Wolff*, 418 U.S. at 562.

[62] *See Wolff*, 418 U.S. at 563.

[63] *See id.* The Court adopted these two requirements from procedures set forth for parole revocation and extended these due process rights to include prison discipline. *See id.* Written notice was required, the Court posited, because prisoners must be given the chance to defend themselves in a way that oral notice does not afford. *See id.* at 564 (citing *In re* Gault, 387 U.S. 1, 33-34 & n.54 (1967)). The Court required a "'written statement by the factfinders as to the evidence relied on and reasons' for the disciplinary action" because it furthered goals of inmate protection and administrative insurance. *Id.* at 564-65 (quoting *Morrissey*, 408 U.S. at 489). The Court further required that a prisoner be permitted to present documentary evidence and call witnesses in his defense during disciplinary proceedings. *See id.* at 566. The Supreme Court cautioned that this should only be done when there is no hazardous risk to correctional goals. *See id.*

Limiting due process rights of prisoners, the Court decided that there is no constitutional right to cross-examination and confrontation in disciplinary actions. *See id.* at 567-68. Furthermore, the Court determined that there is no right to counsel in prison disciplinary procedures, but where there is illiteracy or complexity of an issue, making it unlikely that the prisoner would adequately represent himself, he is free to seek help from a fellow inmate or staff member. *See id.* at 570. The Court concluded *Wolff* by warning that these mandates for prison disciplinary due process are not "graven in stone." *See id.* at 571-72. Just as prison culture evolves, the Court explained, due process rights within the prison system might expand or constrict depending on the circumstances. *See id.* at 572.

[64] 435 U.S. 247 (1978).

[65] *See id.* at 253-55. The Court reasoned that legislative history proves that § 1983 was meant to "'[create] a species of tort liability' in favor of persons who are

the Court found damages for procedural due process violations appropriate regardless of whether those violations caused injuries.[66] If

deprived of 'rights, privileges, or immunities secured' to them by the Constitution." *Id.* at 253 (alteration in original) (quoting Imbler v. Pachtman, 424 U.S. 409, 417 (1976)).

[66] *See id.* at 266-67. *Carey* was a consolidation of two cases involving students' procedural due process rights in school disciplinary procedures. *See id.* at 248, 251. Neither student received a hearing prior to suspension from school as a punishment for violating school rules. *See id.* at 248-50 (describing the events surrounding the students' suspensions). The principal suspended Jarius Piphus from his vocational high school for 20 days based on a suspicion that Piphus had been smoking marijuana. *See id.* at 248-49. Although Piphus disputed his involvement, the principal ordered the sanction. *See id.* A different principal suspended Silas Brisco from his middle school for 20 days for wearing earrings in violation of a school policy that was designed to combat gang problems. *See id.* at 250. Brisco asserted that he wore his earring as a symbol of pride in his ethnicity, rather than gang membership. *See id.* Both students brought a § 1983 claim contending that the respective schools violated their due process rights by suspending them without providing the students an opportunity to be heard. *See id.* at 249-51. The suits sought actual and punitive monetary damages, as well as declaratory and injunctive relief. *See id.* at 250-51.

The District Court for the Northern District of Illinois found that these suspensions without hearings violated the students' procedural due process rights. *See* Piphus v. Carey, 545 F.2d 30, 31 (7th Cir. 1976). The district court refused to award damages, nevertheless, because the students had put forth no evidence to quantify their damages. *See id.* The court further refused to award equitable relief. *See id.* On appeal, the United States Court of Appeals for the Seventh Circuit reversed the district court and held that both damages and equitable relief were appropriate and should have been granted. *See id.* The circuit court compared *Carey* to circuit precedent, recognizing the availability of nonpunitive damages for inherently wrong behavior, such as the violation of one's procedural due process rights. *See id.* (citing Hostrop v. Board of Junior College Dist. No. 515, 523 F.2d 569, 579-80 (7th Cir. 1975) (en banc)). The Seventh Circuit remanded, holding that even if no injury was proven, the district court should permit damages for the violation of the procedural due process right itself. *See id.* at 32.

The Supreme Court granted certiorari to answer the question of "whether, in an action under § 1983 for the deprivation of procedural due process, a plaintiff must prove that he actually was injured by the deprivation before he may recover substantial 'nonpunitive' damages." *Carey*, 435 U.S. at 253 (citation omitted). The Court responded to this question by stating that the principle of compensation should govern § 1983 damage awards and that compensating individuals for injuries caused by the violation of constitutional rights was a basic purpose under the statute. *See id.* at 255-57. Legislative history would indicate, the Court posited, that Congress may have intended damages to be a cognizable remedy under § 1983. *See id.* at 255-57 & n.9 (reiterating passages regarding monetary damages that illustrated some of the original congressional debate surrounding passage of this statute). The Court, however, qualified the Seventh Circuit's decision by holding that absent proof of injury, a person is permitted to recover only nominal, not punitive, damages for the violation of a constitutional right. *See id.* at 266-67; *see also The Supreme Court, 1985 Term—Leading Cases*, 100 HARV. L. REV. 267, 267-68 (1986) (commenting that *Carey* limited recovery for damages to actual injuries resulting from violations of procedural due process).

Having drawn a correlation to the law of torts, *Carey* clarified that deprivations

there were no injuries, however, the Court concluded that the *Carey* plaintiffs could only recover less than one dollar in nominal damages.[67] The *Carey* Court essentially viewed the constitutional violation as simply one more tort wrong.[68] *Carey* severely limits recovery under § 1983 to only those instances where injury results from a procedural due process violation.[69]

The next attempt by the Supreme Court to clarify the procedural due process rights of prisoners came in *Superintendent, Massachusetts Correctional Institution v. Hill*.[70] Specifically, the *Hill* Court asked whether prison disciplinary findings, the result of which deprived prisoners of good-time credits, required evidentiary support in order to satisfy procedural due process.[71] The Court held that due

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of due process, an absolute right, required a remedy through nominal damages. *See Carey*, 435 U.S. at 266. The Court explained that there are dual purposes behind this theory. *See id.* The first purpose, the Court expressed, is the importance to society that those rights be observed. *See id.* The Court added that the second purpose is commitment to the principle that actual injury must be proven for damages to be awarded and that malicious deprivation of constitutional rights be deterred. *See id.* The Supreme Court reasoned that since

> the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed we believe that the denial of procedural due process should be actionable for nominal damages without proof of actual injury.

Id. (citing Boddie v. Connecticut, 401 U.S. 371, 375 (1971); Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 171-72 (1951) (Frankfurter, J., concurring)).

[67] *See Carey*, 435 U.S. at 266-67. Because *Carey* defined the injury as being unjustified suspension, only a finding by the lower court that the students were unjustifiably suspended would result in damages exceeding one dollar. *See id.* at 267.

[68] *See* Daniel L. Rotenberg, *Private Remedies for Constitutional Wrongs—A Matter of Perspective, Priority, and Process*, 14 HASTINGS CONST. L.Q. 77, 86 (1986). The Court has essentially required "only a showing of a constitutional deprivation under color of state law" to establish a prima facie § 1983 case. Mead, *supra* note 7, at 3. In so doing, the Supreme Court has adopted the term "constitutional tort" as the descriptive phrase for § 1983 cases. *See id.* at 2 n.8.

Carey noted, however, that in many instances tort damage principles could not be applied to constitutional violations. *See Carey*, 435 U.S. at 257-58. The Court further recognized that depending on the constitutional right violated, the compensation rules may be tailored accordingly. *See id.* at 259.

[69] *See* Edwards v. Balisok, 117 S. Ct. 1584, 1587 (1997). *Edwards* articulated that *Carey* drew a distinct line between a due process claim against violative procedures and a due process claim against the result of those procedures. *See id.* The Court reasoned, therefore, that under *Carey* if a prisoner proved only a procedural violation of due process but no injury stemming from that violation, he was merely entitled to nominal damages. *See id.* Conversely, the Court implied that if a prisoner proved an injury resulting from violative procedures, he was entitled to more than just nominal damages under *Carey*. *See id.*

[70] 472 U.S. 445 (1985).

[71] *See id.* at 453. Joseph Crawford and Gerald Hill were two inmates in a Massa-

process requires "some evidence"[72] to support the decision of the disciplinary board to revoke a prisoner's good-time credits.[73] Furthermore, the Court emphasized the limits on prisoner due process challenges by explaining that the "some evidence" standard is lower

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chusetts state prison charged with assaulting another inmate and were given prison disciplinary reports. *See id.* at 447. Despite the minimal evidence against them, the prison disciplinary board found the two inmates guilty of violating prison rules and recommended the revocation of 100 days of good-time credits from each prisoner. *See id.* at 448, 457 (recognizing that the evidence "might be characterized as meager"). In addition, the board recommended a 15-day period of isolation for both prisoners. *See id.*

In Massachusetts, prisoners can accumulate credits for complying with prison rules. *See* MASS. GEN. LAWS ANN. ch. 127, § 129 (West 1991). This credit results in reduction of the inmate's prison term. *See id.* Good-time credits may be lost, however, if an inmate violates a prison regulation. *See id.* The Massachusetts legislation regarding good-time credits afforded to state prisoners is very similar to statutes in the states of Washington and Nebraska, discussed *supra* at notes 18 and 56.

The inmates in *Hill* unsuccessfully attempted to appeal the board's decision to the prison superintendent. *See Hill*, 472 U.S. at 448. Crawford and Hill next brought a complaint to the State of Massachusetts Superior Court, claiming a violation of their due process rights. *See id.* Because the court found no constitutionally adequate evidence supporting the disciplinary board's decision, summary judgment was granted for the inmates and their good-time credits were restored. *See id.* On appeal, the Massachusetts Supreme Judicial Court affirmed the lower court's decision and reasoning. *See* Hill v. Massachusetts Correctional Inst., 466 N.E.2d 818, 822 (Mass. 1984). The Supreme Court granted certiorari in order to address the issue of whether there was a standard of evidence that prison disciplinary board decisions must meet in order to satisfy the Due Process Clause. *See Hill*, 472 U.S. at 453.

[72] *See Hill*, 472 U.S. at 455. The Court declared that "[t]his standard is met if 'there was some evidence from which the conclusion of the administrative tribunal could be deduced . . . .'" *Id.* (citations omitted) (quoting United States *ex rel.* Vajtauer v. Commissioner of Immigration, 273 U.S. 103, 106 (1927)). The relevant question to be asked under this standard is "whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." *Id.* at 455-56.

[73] *See id.* at 455. Under *Wolff*, the *Hill* Court assumed that good-time credits were a state-created protected liberty interest under the Fourteenth Amendment. *See id.* at 453-54 (citing Wolff v. McDonnell, 418 U.S. 539, 557 (1974)). *Hill* extended the due process requirements of *Wolff* by including a higher evidence standard for the revocation of good-time credits. *See id.* at 454.

Commenting that due process requirements are not set in stone, the Court explained that government action and the liberty interests affected by such action must be balanced. *See id.* The Court illustrated this concept by finding that while the government had an interest in the administration of its institutions, the inmate had a liberty interest in believing that his good-time credits would not be revoked absent due process. *See id.* The Court stressed that in many contexts a deprivation of a liberty interest would violate due process if there was no evidence to support the decision. *See id.* at 455. By the same token, the Court was unwilling to impose new burdens on prison disciplinary proceedings. *See id.* The Supreme Court compromised with the standard of "some evidence" to support the decisions of prison disciplinary boards. *See id.*

than the evidence needed for a criminal conviction[74] and can be satisfied by the mere showing of any evidence that would sustain the determination of the disciplinary board.[75]

Recently, in *Heck v. Humphrey*,[76] the Court severely limited the right of a state prisoner to seek damages in a § 1983 challenge regarding the legality of his conviction.[77] Indiana prisoner Roy Heck filed a § 1983 suit alleging that government officers violated his due process rights during the investigation prior to his conviction for manslaughter.[78] The United States District Court for the Southern District of Indiana dismissed the action pursuant to Seventh Circuit precedent holding that a prisoner must exhaust his state remedies prior to bringing a civil rights claim of wrongful conviction.[79] On appeal, the United States Court of Appeals for the Seventh Circuit

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[74] *See id.* at 456. The Court justified this lower standard of evidence by stressing that due process rights guaranteed to a person who is faced with a criminal conviction are different than those rights promised to a prisoner facing revocation of his good-time credits. *See id.* (citing Jackson v. Virginia, 443 U.S. 307, 324 (1979); *Wolff*, 418 U.S. at 556).

[75] *See id.* at 455-56; *see also Vajtauer*, 273 U.S. at 106 (stating that there must be "some evidence from which the conclusion of the administrative tribunal could be deduced"). The *Hill* Court explained that this standard does not require a full examination of the record and witnesses, nor does it require a balancing of the evidence. *See Hill*, 472 U.S. at 455. Upon examining the facts of the *Hill* case, the Court resolved that there was sufficient evidence to meet the new standard. *See id.* at 456. Although there was very little evidence to support the prison disciplinary board's decision, the Court noted that there was enough to determine that there was no violation of procedural due process. *See id.* at 457.

[76] 512 U.S. 477 (1994).

[77] *See id.* at 486-87.

[78] *See id.* at 478-79; Heck v. Humphrey, 997 F.2d 355, 356-57 (7th Cir. 1993). A jury convicted Heck of voluntary manslaughter for killing his wife. *See* Heck v. State, 552 N.E.2d 446, 448 (Ind. 1990). Accordingly, Heck received a 15-year jail sentence. *See id.* The state's evidence showed Heck's history of battering his wife, Heck lying about her whereabouts, Heck fleeing the state once police began to search his property, the finding of the body on his property, the pathologist's report that a blow to her head probably caused the deceased death, and a witness identifying Heck's voice on a tape recorder. *See id.* at 449-50. The Supreme Court of Indiana held that the circumstantial evidence supported the conviction. *See id.* Heck then filed a federal habeas corpus petition. *See Heck*, 512 U.S. at 479. The habeas corpus petition was denied, and the United States Court of Appeals for the Seventh Circuit affirmed the decision. *See* Heck v. Richards, 976 F.2d 735 (7th Cir. 1992) (unpublished table decision).

With his direct appeal pending, Heck brought a § 1983 petition for damages in district court, claiming that his due process rights had been violated. *See* Heck v. Humphrey, 512 U.S. 478-79 (1994) (No. 93-6188). Specifically, Heck claimed that identifiable state officials directed an unlawful property search, illegally destroyed exculpatory evidence, and conducted a voice-identification procedure that was unlawful. *See id.* at 479.

[79] *See Heck*, 997 F.2d at 357.

affirmed the lower court's ruling and held that because Heck's claim for damages challenged the legality of his state conviction, his only remedy was a writ of habeas corpus.[80]

To define further the perimeters of prisoner § 1983 claims, the United States Supreme Court granted Heck's petition for certiorari.[81] The Court affirmed the decision of the Seventh Circuit and held that a challenge to a conviction that seeks monetary damages was not cognizable under § 1983.[82] The *Heck* Court did not agree with the reasoning of the appellate court, however, and restated that § 1983 contained no exhaustion requirement.[83] Rather, the Court deter-

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[80] *See id.* The Seventh Circuit expressed that

> [i]f, regardless of the relief sought, the plaintiff is challenging the legality of his conviction, so that if he won his case the state would be obliged to release him even if he hadn't sought that relief, the suit is classified as an application for habeas corpus and the plaintiff must exhaust his state remedies, on pain of dismissal if he fails to do so.

Id. (citing Viens v. Daniels, 871 F.2d 1328, 1332 (7th Cir. 1989); Scruggs v. Moellering, 870 F.2d 376, 379 (7th Cir. 1989); Hanson v. Heckel, 791 F.2d 93, 95 (7th Cir. 1986) (per curiam)). In so holding, the court decided that Heck's suit was correctly dismissed rather than stayed pending state court judgments. *See id.* at 357. The court cautioned that if Heck chose to refile after meeting the exhaustion requirement, he might encounter a statute of limitations defense, so he would have to move quickly. *See id.*

[81] *See* 510 U.S. 1068 (1994).

[82] *See Heck*, 512 U.S. at 483, 490.

[83] *See id.* at 480 (citing Patsy v. Board of Regents, 457 U.S. 496, 509 (1982)). *But see* 42 U.S.C.A. § 1997e (1997) (requiring exhaustion of administrative remedies for those prisoner civil rights claims challenging prison conditions alone). The Supreme Court noted, however, that 28 U.S.C. § 2254, the federal habeas corpus statute, does contain an exhaustion requirement. *See Heck*, 512 U.S. at 480-81 & n.3. The *Heck* Court expounded on the historical overlap between § 1983 and the federal habeas corpus statute. *See id.* at 480-81.

By relying on *Preiser*, the Court contended that state prisoners who seek injunctive relief and challenge the fact or length of their imprisonment can only find relief in habeas corpus. *See id.* at 481 (citing Preiser v. Rodriguez, 411 U.S. 475, 488-90 (1973)). *Heck* maintained that *Preiser* created no exception to the § 1983 mandate of no exhaustion for prisoner civil rights claims against the fact or duration of imprisonment. *See id.* The Court noted, however, that Heck requested damages that would not have been remedied through habeas corpus. *See id.* In fact, the Court opined, *Preiser* specifically held that a prisoner could bring a damages action under § 1983. *See id.* The *Heck* Court nonetheless expanded the concept created in *Preiser* to include prisoner § 1983 claims that "necessarily demonstrate[] the invalidity of the conviction" the result of which attacks the fact or duration of confinement. *Id.* at 481-82. The Court found justification for this in *Preiser*'s dicta, explaining that when a state prisoner attacks the confinement itself, the appropriate remedy is habeas corpus, not § 1983. *See id.* at 482 (citing *Preiser*, 411 U.S. at 490).

The *Heck* Court found further justification for its holding by limiting *Wolff*. *See id.* at 482-83 (citing Wolff v. McDonnell, 418 U.S. 539, 554-55 (1974)). *Heck* explained that *Wolff* permitted a prisoner's § 1983 damages claim challenging only flawed procedures, not a wrong result. *See id.* Upon the precedent of *Preiser* and

mined that pursuant to *Carey*, tort law barred Heck's suit.[84] By analogizing § 1983 to the common law tort of malicious prosecution, the Court concluded that unless a conviction is previously determined invalid, a prisoner cannot seek damages in a § 1983 challenge to his conviction.[85]

Wolff, the Supreme Court posited that while claims seeking damages that challenge the fact or duration of confinement were not cognizable under § 1983, those claims that challenge only faulty procedures, rather than the confinement itself, might be remedied by § 1983. *See id.* at 483. The Court, therefore, found no reason to add an exhaustion requirement to § 1983, when the appropriate inquiry is whether there is a cognizable claim at all. *See id.*

[84] *See Heck*, 512 U.S. at 483. The Court noted that the common law of torts is a starting point for a § 1983 inquiry. *See id.* (citing Carey v. Piphus, 435 U.S. 247, 257-58 (1978)). Because the common law required proof of a prior criminal proceeding that favored the accused before relief of the kind sought by Heck could be considered, the Court proceeded to bar Heck's suit. *See id.* at 486-87.

[85] *See id.* at 486-87. The Supreme Court chose to compare a prisoner's § 1983 suit to a malicious prosecution cause of action because both sought damages for unfair imprisonment arising out of the legal process. *See id.* at 484. Yet, the Court noted that in order for a plaintiff to succeed in a malicious prosecution action, a criminal proceeding must be terminated in his favor. *See id.* (citing Carpenter v. Nutter, 59 P. 301, 302 (Cal. 1899); PROSSER & KEETON, *supra* note 10, §119, at 874). The Court then superimposed the malicious prosecution requirements onto § 1983 requirements by way of analogy and held that in order for a prisoner to succeed in a § 1983 action, he must first prove that his conviction was unlawful. *See id.* at 486-87. A litigant can prove an unlawful conviction, the Court surmised, in a number of ways, including a reversal on direct appeal, an executive order expunging the conviction or sentence, a declaration of invalidity by a state tribunal, or a habeas corpus writ issued by a federal court. *See id.* at 486-87. Thus, the Supreme Court held:

> [W]hen a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

Id. at 487 (footnotes omitted).

Heck was a unanimous decision, but only five Justices embraced the malicious prosecution analogy. *See Heck*, 512 U.S. at 492 (Souter, J., concurring) (dismissing the majority's malicious prosecution analysis); *see also* Peter L. Strauss, *On Resegregating the Worlds of Statute and Common Law*, 1994 SUP. CT. REV. 429, 447-49 (1994) (discussing the different opinions in *Heck*). Justice Scalia, writing for the majority, was joined by Chief Justice Rehnquist and Justices Kennedy, Thomas, and Ginsburg in adapting the malicious prosecution guidelines to § 1983 claims. *See Heck*, 512 U.S. at 478. Justice Souter, joined by Justices Blackmun, Stevens, and O'Connor, "preferred to ground the outcome in what he perceived to be the appropriate relationship between § 1983 and the federal habeas corpus statute." Strauss, *supra*, at 447; *see also Heck*, 512 U.S. at 503 (Souter, J., concurring) (reasoning § 1983 should be construed "in light of the habeas statute and its explicit policy of exhaustion."). Justice Thomas wrote a separate concurrence that appeared to apologize for the

Against this foundation of precedent, the United States Supreme Court, in *Edwards v. Balisok*,[86] extended *Heck* to include prison procedures resulting in inmate sanctions.[87] The *Edwards* Court determined that, generally, any § 1983 procedural due process challenge to prison disciplinary procedures that requests monetary or declaratory relief must be preceded by a finding that the result of those procedures was invalid.[88] The Court clarified that without a previous determination that the discipline imposed was invalid, such a claim challenging the procedures, rather than the result, is not cognizable if the allegations necessarily imply that the result was invalid.[89]

Writing for a unanimous Court, Justice Scalia began by reiterating the principles set forth in *Heck*.[90] The Court maintained that, under *Heck*, unless an inmate can show that his conviction or sentence was previously invalidated,[91] he cannot bring a § 1983 claim if judgment in his favor would necessarily suggest that his conviction or sentence was invalid.[92] Justice Scalia further listed the similarities between Balisok's claims and those alleged in *Heck*.[93]

Nevertheless, the Court noted that Balisok's limited request for damages due to the deprivation alone was very different than the substantive challenge put forth in *Heck*.[94] The Court explained the

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Court-created tension between the two statutes. *See Heck*, 512 U.S. at 491 (Thomas, J., concurring).

[86] 117 S. Ct. 1584 (1997).

[87] *See id.* at 1589.

[88] *See id.*

[89] *See id.* at 1587.

[90] *See id.* at 1586.

[91] *See id.*; *see also* Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (listing examples of how such a conviction or sentence could be declared invalid).

[92] *See Edwards*, 117 S. Ct. at 1586 (quoting *Heck*, 512 U.S. at 487); *see also* Savoy, *supra* note 12, at 138 (commenting that the *Heck* Court determined that a claim for damages brought under § 1983 by a state prisoner questioning the fact or length of his sentence is an actual challenge to the legality of the conviction and that such a claim cannot be brought under § 1983 at all).

[93] *See Edwards*, 117 S. Ct. at 1587. While the procedural due process violations alleged in *Heck* revolved around the collection of evidence for use in a criminal trial, the Court drew a correlation to Balisok's procedural due process claims against prison disciplinary officials. *See id.* The Supreme Court noted that Balisok claimed to have been denied the opportunity to be heard at his prison disciplinary hearing and that the officer's deceit and bias prevented this procedural due process right. *See id.* Balisok further alleged, the Court relayed, that prison officials failed to date-stamp the statements of potential witnesses for disciplinary hearings. *See id.* at 1589.

[94] *See id.* at 1587. Justice Scalia clarified that Balisok had stated a challenge to the prison disciplinary procedures themselves, not the deprivation of his good-time credits. *See id.* Furthermore, the Court posited, while Balisok sought both compensatory and punitive damages, he did not explicitly seek restoration of the good-time

importance of this distinction based on *Carey v. Piphus*.[95] Under that holding, the Court reminded, Balisok may be entitled to nominal damages for proving only that the procedures violated his due process rights.[96]

The Supreme Court further found error in the Ninth Circuit's reading of *Carey*.[97] The Court declined to find cognizable all § 1983 claims challenging prison disciplinary procedures—not the result of those procedures.[98] Rather, the Court indicated that federal courts should evaluate whether such challenges implied that the punishment imposed was invalid.[99] Justice Scalia recognized that *Heck* contemplated the potential problem of distinguishing between claims challenging procedures from claims challenging the result of those procedures.[100] As such, the Justice explained that *Heck* should be extended to include claims of the type brought by Balisok.[101]

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credits as part of the relief. *See id.* at 1586-87. The Court indicated that the reason Balisok did not seek to have his good-time credits restored in the § 1983 petition was due in large part to the Supreme Court's holding in *Preiser*, requiring such relief to be sought only in a habeas corpus action. *See id.* (citing Preiser v. Rodriguez, 411 U.S. 475, 500 (1973)).

[95] *See id.* at 1587 (citing Carey v. Piphus, 435 U.S. 247, 266-67 (1978)); *see also supra* notes 64-69 and accompanying text (discussing *Carey*).

[96] *See Edwards*, 117 S. Ct. at 1587 (citing *Carey*, 435 U.S. at 266-67). The Court suggested that, under *Carey*, if Balisok proved that the procedures used by prison officials to deprive him of his good-time credits violated his due process rights, he was only entitled to nominal damages. *See id.* Yet, the Court implied, if he further proved he was injured as a result of the violation, he was entitled to more than just nominal damages. *See id.* The Court insinuated that Balisok could only be rewarded compensatory and punitive damages if he could prove two things: (1) the disciplinary procedures used to deprive him of his good-time credits violated his due process rights and (2) he would not have been deprived of good-time credits if the proper procedures had been followed, thus proving a tangible injury. *See id.*

[97] *See id.* The Supreme Court invalidated the precedent set by the United States Court of Appeals for the Ninth Circuit in *Gotcher v. Wood*. *See id.*; *see also* Gotcher v. Wood, 66 F.3d 1097, 1099 (9th Cir. 1995), *cert. granted and judgment vacated*, 117 S. Ct. 1840 (1997). In *Gotcher*, the circuit court held that prisoners' § 1983 due process challenges to disciplinary procedures, the result of which deprived them of state-created liberty interests, did not fall under *Heck* as a challenge to the lawfulness of their confinement. *See Gotcher*, 66 F.3d at 1099. The Supreme Court granted certiorari, vacated, and remanded *Gotcher* on May 27, 1997, pursuant to the *Edwards* holding. *See* Wood v. Gotcher, 117 S. Ct. 1840, 1840 (1997).

[98] *See Edwards*, 117 S. Ct. at 1587.

[99] *See id.* at 1588 (citing *Gotcher*, 66 F.3d at 1099).

[100] *See id.* at 1587-88 (quoting Heck v. Humphrey, 512 U.S. 477, 482-83, 486-87 (1994)). The Court referred to two specific instances in *Heck* that anticipated the very challenge brought by Balisok. *See id.* First, the *Heck* Court distinguished the holding in *Wolff* from potential future suits. *See id.* at 1587 (citing Wolff v. McDonnell, 418 U.S. 539, 554-55 (1974)). The Court explained that *Wolff* permitted a § 1983 claim challenging the procedures of prison disciplinary boards, but did not set a precedent requiring all federal courts to do the same. *See id.* The Court further

Continuing, the Court demonstrated in four steps how Balisok's allegations implied the invalidity of the sanctions imposed, thus precluding him from seeking redress in a § 1983 claim.[102] First, the Court established that Balisok claimed to have been denied the opportunity to be heard and to defend himself at the prison disciplinary hearing.[103] Next, the Court determined that if the allegations were true, the disciplinary board committed an obvious procedural due process violation.[104] Third, the Court recognized that Balisok alleged not only that there were violations of procedural due process, but also that those violations were caused by deceit and bias on the part of the hearing officer.[105] Finally, Justice Scalia resolved that even though prison disciplinary hearings are afforded less procedural due

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contended that there was no "'indication in the opinion, or any reason to believe, that using the wrong procedures necessarily vitiated the denial of good-time credits.'" *Id.* (quoting *Heck*, 512 U.S. at 482-83). Therefore, the Court concluded, "'the claim at issue in *Wolff* did not call into question the lawfulness of the plaintiff's continuing confinement,'" as other claims might. *Id.* at 1587-88 (quoting *Heck*, 512 U.S. at 482-83). Essentially, the Court reasoned that even though the *Heck* Court distinguished *Wolff*, subsequent claims that question the legality of confinement are not cognizable as § 1983 actions. *See id.* at 1587.

Second, the *Heck* Court required that a prisoner not only prove that there were invalid procedures, but that the conviction had been rendered invalid in a prior proceeding. *See id.* (quoting *Heck*, 512 U.S. at 486-87). Additionally, the Court acknowledged that *Heck* offered an example of a prisoner's § 1983 claim that did not seek damages for unlawful conviction itself, but "whose successful prosecution would necessarily imply that the plaintiff's criminal conviction was wrongful." *Id.* (quoting *Heck*, 418 U.S. at 486, n.6).

[101] *See Edwards*, 117 S. Ct. at 1589.

[102] *See id.* at 1588.

[103] *See id.* The Court recounted that Balisok specifically claimed that he was denied the right to present witnesses who possessed exculpatory evidence. *See id.* Apparently, the Court noted, all witness testimony pertinent to the defense was excluded from the hearing. *See id.*

[104] *See id.* Justice Scalia explained that good-time credits had been restored for such violations, by both state and federal courts. *See id.* (citing Kingsley v. Bureau of Prisons, 937 F.2d 26, 27 (2d Cir. 1991) (ordering the district court to reinstate good-time credits wrongfully revoked from an inmate due to disciplinary procedures not in compliance with due process); Dumas v. State, 654 So. 2d 48, 49 (Ala. Crim. App. 1994) (ruling that if the lower court determined that the inmate was denied procedural due process during his disciplinary hearing, a new hearing was needed); Mahers v. State, 437 N.W.2d 565, 568-69 (Iowa 1989) (permitting post-conviction relief for an inmate who was denied procedural due process rights during his disciplinary hearing); Contras v. Coughlin, 604 N.Y.S.2d 651, 652 (App. Div. 1993) (holding that a violation of an inmate's due process rights resulted in a necessary dismissal of the charges against him and a cancellation of the resultant sanctions)).

[105] *See id.* The Court commented that Balisok claimed Edwards purposely lied about whether witness statements existed, thus violating Balisok's right to submit exculpatory evidence. *See id.* This, the Court suggested, was essentially an allegation of deceit and bias. *See id.*

process protections than criminal proceedings,[106] there would still be grounds for reversing a decision made by a biased hearing officer.[107]

Having determined that Balisok's allegations implicitly rendered his sanction invalid, the Court rejected his contrary argument.[108] Because Balisok brought a procedural rather than a substantive challenge, the Court criticized his contention that the "some evidence" standard[109] would vitiate restoration of good-time credits even if there were a judgment in his favor.[110] The Court explained

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[106] *See id.*; *see also* Wolff v. McDonnell, 418 U.S. 539, 555-56 (1974) (contending that the Supreme Court only requires minimally fair procedures when a prisoner is confronted with severe and formal disciplinary actions, because "the full panoply of rights due a defendant in such proceedings does not apply."); NOWAK & ROTUNDA, *supra* note 2, § 13.9, at 562 (explaining that the due process rights of the incarcerated have been valued differently than those of most citizens because there is a limit on a prisoner's constitutional rights).

[107] *See Edwards*, 117 S. Ct. at 1588 (citing Arizona v. Fulminante, 499 U.S. 279, 308 (1991) (maintaining that the right to an impartial judge is a basic constitutional right); Tumey v. Ohio, 273 U.S. 510, 535 (1927) (determining that regardless of the weight of evidence against an individual, one right always afforded a person is a judgment made by an impartial judge)).

[108] *See id.* at 1588-89.

[109] *See id.* at 1588. This standard of evidence, the Court maintained, was explained in *Superintendent, Massachusetts Correctional Institution v. Hill*, as being a standard that would be satisfied by the mere production of *any* evidence that would sustain the disciplinary board's determination. *See id.* (citing Superintendent, Mass. Correctional Inst. v. Hill, 472 U.S. 445, 455 (1985)).

[110] *See id.* at 1588-89. Balisok's argument, the Court concluded, was that there was surely enough evidence against him to satisfy the "some evidence" standard required for prison disciplinary actions. *See id.* at 1588. Thus, the Court posited, his claim was that even if he prevailed in his procedural due process challenge against the disciplinary board, there would still be enough evidence to uphold revocation of his good-time credits. *See id.*

The Supreme Court addressed this contention by explaining that the mandates of due process are satisfied if the procedures comport with both the minimum requirements articulated in *Wolff* and the "some evidence" standard. *See id.* at 1588-89 (quoting *Hill*, 472 U.S. at 455; *In re* Johnston, 745 P.2d 864, 867 (Wash. 1987) (en banc)); *see also supra* notes 59-63 and accompanying text (discussing the requirements announced in *Wolff*); *supra* note 72 (detailing the "some evidence" standard). The Court suggested, however, that if due process does not comport to the minimum requirements, it cannot be overcome by achievement of the proper standard of evidence. *See Edwards*, 117 S. Ct. at 1589. The Court thus indicated that the good-time credits revoked from Balisok would have to be restored if his procedural challenge was proven. *See id.* This, the Court noted, was implicit in his procedural allegation. *See id.* Further, the Court explained that his contention that the "some evidence" standard would preclude restoration of his good-time credits was false. *See id.* Because Balisok complained of a "bias and deceit" procedural defect, the Court stated that the "some evidence" standard would not automatically prevent the restoration of his good-time credits. *See id.*

that the standard of evidence is not outcome determinative when the judgment is attacked on the basis of a procedural challenge.[111]

Next, Justice Scalia discussed Balisok's injunctive relief request, which would require prison officials to date-stamp witness statements for disciplinary hearings.[112] The Court noted that this type of assertion did not suggest that the revocation of good-time credits was invalid.[113] Following this line of reasoning, the Court observed that such a request might be a proper subject for a § 1983 claim.[114] The Court cautioned, however, that in order to prevail, Balisok would have to establish standing and the other requirements of injunctive relief.[115] Finally, because the lower courts did not discuss Balisok's injunctive claim, and because neither side argued the merits of it, the Court indicated that the lower courts should address the issue on remand.[116]

The Court also briefly addressed the exhaustion issue.[117] Justice Scalia expressed disagreement with the district court's decision to stay the action rather than to dismiss it.[118] The Court explained that Balisok was seeking to have his good-time credits restored through state court remedies and that the district court assumed the § 1983 proceeding could be put on hold until the state court reached a decision.[119] The Supreme Court reiterated that, pursuant to both legislative and judicial history, there was no exhaustion requirement imposed upon § 1983 claims of this kind.[120] Accordingly, the Court

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[111] *See Edwards*, 117 S. Ct. at 1588-89.

[112] *See id.* at 1589. The Court summarized Balisok's claim by stating, "His amended complaint alleges that prison officials routinely fail to date-stamp witness statements that are made in cases involving 'jail house attorney[s]' like himself, in order to weaken any due-process challenge for failure to call witnesses." *Id.*

[113] *See id.*

[114] *See id.*

[115] *See id.* (citing Lewis v. Casey, 116 S. Ct. 2174, 2179 (1996) (determining that because it is a court's role to provide relief from actual harm, an inmate seeking injunctive relief must establish standing before the merits of the case should be heard); O'Shea v. Littleton, 414 U.S. 488, 499 (1974) (holding that in order to provide an adequate basis for injunctive relief, a claimant must show that there are no principles that might preclude equitable intervention)).

[116] *See id.* at 1589.

[117] *See Edwards*, 117 S. Ct. at 1589.

[118] *See id.*

[119] *See id.*

[120] *See id.* (citing Heck v. Humphrey, 512 U.S. 477, 481, 483 (1994) (finding no need to abandon judicial history that has not imposed an exhaustion requirement on § 1983 suits)); *see also* Patsy v. Board of Regents, 457 U.S. 496, 516 (1982) (instructing that because Congress has not directed an exhaustion requirement be imposed upon § 1983, the courts should not impose one). *But see* 42 U.S.C.A. § 1997e (West 1997) (requiring exhaustion of administrative remedies for those pris-

asserted, a claim under § 1983 is either cognizable or it is not, and it should not be stayed pending state court action.[121]

Finally, the Supreme Court concluded that a claim for damages and declaratory relief alleging procedural due process violations due to deceit and bias on the part of prison officials is not cognizable under § 1983 because it necessarily implies the invalidity of the disciplinary action.[122] Accordingly, the Court reversed the Ninth Circuit decision and remanded the case for further proceedings.[123]

In a concurring opinion, Justice Ginsburg, joined by Justices Souter and Breyer, agreed with the holding of the Court that a § 1983 claim is not cognizable when brought by a prisoner who implies that the punishment imposed at his disciplinary hearing was invalid.[124] Rather than join the majority opinion, Justice Ginsburg concurred to stress that only Balisok's claims of deceit and bias effected such a result.[125] The concurrence emphasized that Balisok's other procedural claims would not necessarily suggest that the revocation of his good-time credits was in error.[126] Justice Ginsburg thus suggested a less limited review of Balisok's claims under the new guidelines set forth by the Court.[127]

Edwards is not surprising given the judicial trend to restrict prisoner litigation.[128] Although fundamental due process rights are at

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oner civil rights claims challenging prison conditions alone).

[121] *See Edwards*, 117 S. Ct. at 1589. The Court implied that there had been some confusion on this issue at the district court level. *See id.* In an effort to clarify the confusion, Justice Scalia emphasized that district courts should either dismiss or admit § 1983 claims, but should not stay them pending state decisions. *See id.*

[122] *See id.* In so holding, the Court found that Balisok's claim implied that his good-time credits were revoked in error. *See id.* Thus, Balisok was barred from bringing the civil rights suit against Edwards and Wood unless and until he was successful in receiving a restoration of the credits. *See id.*

[123] *See id.*

[124] *See id.* at 1589 (Ginsburg, J., concurring).

[125] *See id.*

[126] *See id.* (citing Wolff v. McDonnell, 418 U.S. 539, 564-65 (1974)). Justice Ginsburg remarked that one such claim was Balisok's allegation that Edwards failed to specify the exact evidence supporting the disciplinary board's finding of guilt. *See id.* This, the Justice explained, would not necessarily fall under *Heck* nor imply that the good-time credits were deprived unfairly. *See id.* For that reason, Justice Ginsburg continued, a claim of this sort "is immediately cognizable under § 1983." *Id.*

[127] *See Edwards*, 117 S. Ct. at 1589 (Ginsburg, J., concurring).

[128] *See* Doumar, *supra* note 11, at 11. On account of the rising numbers of prisoners' § 1983 petitions, the Court has sought to limit its application. *See id.* at 10. Congress has also sought statutorily to limit prisoner litigation. *See* Prison Litigation Reform Act of 1996, Pub. L. No. 104-134, § 801, 110 Stat. 1321 (amending scattered sections of 18 U.S.C., 28 U.S.C., and 42 U.S.C.). *See generally* Ricardo Solano Jr., Note, *Is Congress Handcuffing Our Courts?*, 28 SETON HALL L. REV. 282 (1997)

stake, in the name of comity the Court has once again opted to shy away from an important federal protection. Limiting § 1983 claims may be an indulgent attempt to define better the stretch of both civil rights protections and federal habeas corpus laws.[129] Nevertheless, the Court may have opened the door to a new generation of dilemmas surrounding § 1983.

Lawyers and judges have been waiting for the Supreme Court to give explicit, operative, and beneficial guidelines for handling both § 1983 and habeas corpus claims.[130] The Court has done that through *Preiser*, *Heck*, and *Edwards* by severely limiting prisoners' opportunities to bring § 1983 claims.[131] By mandating that a prisoner must be successful in a habeas corpus petition before bringing a procedural due process claim under § 1983, the Court has effectively eliminated § 1983 as a remedy for prisoners.[132] Thus, it is apparent that unless Balisok can convince a court or administrative tribunal to

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(discussing the implications of the Prison Litigation Reform Act on prisoners' rights litigation).

[129] *See* 42 U.S.C. § 1983 (1988); 28 U.S.C. § 2254 (1994). These two important and popular statutes intersect and cause tension or confusion for many in the legal field. *See* Erwin Chemerinsky, *A New Obstacle in Civil Rights Litigation*, Trial, July 1997, at 87. This tension is, in part, because there is an exhaustion requirement in § 2254 whereas there is no exhaustion requirement for almost all § 1983 claims. *See id.* Because of *Preiser*, the exclusive remedy for a challenge to the fact or duration of a prisoner's confinement is habeas corpus, and § 1983 cannot be invoked for such a purpose. *See id.* A prisoner, however, is also precluded from seeking a § 1983 cause of action for monetary relief for an allegedly unlawful conviction unless and until the conviction has been overturned. *See id.*; *see also* Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). Nevertheless, generally a prisoner's only recourse in overturning a conviction is habeas corpus, which has an exhaustion requirement. *See id.* The implicit implication of *Heck* was the imposition of an exhaustion requirement on these types of § 1983 claims. *Cf. id.*

[130] *See* Melissa L. Koehn, *Dividing the Indivisible: The Supreme Court Once Again Faces the Overlap of Habeas and Section 1983*, WEST'S LEGAL NEWS, Nov. 8, 1996, at *5, *available in* 1996 WL 646787. The legal community has been waiting for these guidelines because of the tension between the two statutes. *See id.*; *see also supra* note 129 and accompanying text (discussing the crossroads of § 1983 and habeas corpus).

[131] *See Edwards*, 117 S. Ct. at 1589; *Heck*, 512 U.S. at 486-87; Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

[132] *See Edwards*, 117 S. Ct. at 1589 (extending *Heck* to include prisoner civil rights claims against in-prison procedures and specifically requiring that an inmate receive a restoration of his good-time credits before he can bring a procedural due process claim under § 1983); *Heck*, 512 U.S. at 486-87 (holding that in order for a prisoner to recover damages under § 1983, he must prove that his conviction was deemed invalid by a writ of habeas corpus or other such declaration); *Preiser*, 411 U.S. at 500 (stating that the sole federal remedy for a prisoner challenging the fact or length of his conviction is achieved through a writ of habeas corpus, not § 1983).

reinstate his good-time credits, he cannot bring a § 1983 claim for damages resulting from a violation of his due process rights.

Although it is necessary to limit § 1983 claims to those individuals who can *prove* the existence of a procedural due process violation, the Court extends this reasoning too far in *Edwards*.[133] Scholars have interpreted *Heck* to be a matter of issue preclusion because the decision prevents prisoners from collaterally attacking their convictions in § 1983 civil suits.[134] *Edwards*, however, is troubling under the issue preclusion doctrine because Balisok had never been given an opportunity to litigate his due process violation claim.[135] Moreover, Balisok did not seek redress for the wrong result, the deprivation of good-time credits.[136] Rather, he sought damages for the alleged procedural violations alone.[137] If Balisok truly had a valid procedural due process claim, it would follow that such a claim would warrant § 1983 scrutiny.[138] The Court, in essence, has carved out a "prisoner's exception" to the principle that a procedural violation is always cognizable under § 1983 regardless of whether the result of the procedure is correct.[139] The Court, in so holding, has made it virtually impossible for a prisoner to bring a claim challenging prison procedures alone.

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[133] *See* Chemerinsky, *supra* note 129, at 88.

[134] *See id.* This would explain (1) the malicious prosecution analogy employed by Justice Scalia in *Heck* and (2) the requirement of "termination of the prior criminal proceeding in favor of the accused." *Heck*, 512 U.S. at 484. Thus, *Heck* maintained that the question of a valid conviction must be litigated and resolved in a prior proceeding or relief is precluded under § 1983. *See* Chemerinsky, *supra* note 129, at 88.

[135] *See* Chemerinsky, *supra* note 129, at 88.

[136] *See Edwards*, 117 S. Ct. at 1586-87. In fact, *Edwards* had reserved the right to seek such redress in an appropriate forum. *See id.* at 1587. The Court also indicated that Balisok was in the process of seeking to have his good-time credits restored in state court while his federal petition was pending. *See id.*

[137] *See id.* at 1587.

[138] *See* Carey v. Piphus, 435 U.S. 247, 266-67 (1978) (stating that a § 1983 claim exists when claiming wrong procedure, rather than wrong result). A person is entitled to nominal damages under § 1983 for the mere violation of a fundamental right. *See id.* at 266. Compensatory and punitive damages are reserved for those instances where a person is injured by the violation of a fundamental right. *See id.* at 266. If Balisok claimed only that the procedures were unconstitutional, not that the result of those procedures was unconstitutional, this would appear to be a valid § 1983 claim under *Carey*. *See* Chemerinsky, *supra* note 129, at 88.

[139] *Compare Edwards*, 117 S. Ct. at 1587 (holding that a prisoner's § 1983 claim challenging only the procedures, but that implies an invalid result, must be preceded by a finding that the result was invalid) *with Carey*, 435 U.S. at 266-67 (declaring that "the denial of procedural due process should be actionable" irrespective of "the merits of the claimant's substantive assertions").

The most obvious problem with *Edwards*'s reading of *Carey* is that issue preclusion denies prisoners in Balisok's position from ever litigating their claims of procedural violations without first demonstrating that the result was previously found to

Another point of confusion stemming from *Edwards* can be found in the Court's language establishing those petitions that may be cognizable under § 1983.[140] By leaving it up to lower courts to determine those challenges that "'necessarily imply' the invalidity"[141] of prison sanctions, the Court has left too much room for interpretation. Even within the unanimous opinion, the Justices were not clear on which of Balisok's claims may be pursued in future § 1983 challenges.[142] Clearly, this could result in inconsistent application at the district court level.[143] Furthermore, if there is a risk of confusion among district courts, there is a greater risk of confusion among pro se litigants.[144]

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be invalid. In other words, only in a prisoner's civil rights claim must the challenge against procedures be based upon whether the result was correct. This is in direct contradiction with *Carey*. The Ninth Circuit appears to have appropriately applied the *Carey* concept to *Edwards* by finding that "a claim challenging only the procedures employed in a disciplinary hearing is always cognizable under § 1983." *Id.*

[140] *See Edwards*, 117 S. Ct. at 1589.

[141] *Id.* (citation omitted).

[142] *See id.* at 1589 (Ginsburg, J., concurring). Justice Ginsburg, joined by Justices Souter and Breyer, believed that Balisok's allegations of other procedural defects not based on claims of deceit and bias did "not necessarily imply the invalidity of the deprivation of his good-time credits, and therefore [were] immediately cognizable under § 1983." *Id.* Justice Scalia, on the other hand, did not address the other claims, leaving them open to interpretation. *See id.*

[143] *See* Chemerinsky, *supra* note 129, at 88. Professor Chemerinsky has identified one such confusion in applying this standard at the district court level:

> State and local officials are likely to try to use *Heck* and *Edwards* to preclude many § 1983 claims. For example, there is now a split between the circuits as to whether *Heck* applies in suits for excessive force against police officers when brought by individuals who have been convicted.
>
> Logically, *Heck* would not seem to apply to such claims: Whether the police used excessive force is completely distinct from whether the defendant committed the crime. Yet *Edwards* shows that *Heck* will be taken as establishing a new rule of preclusion, and it is unclear how far the Court will extend it.

Id. (footnotes omitted).

[144] *Cf.* Preiser v. Rodriguez, 411 U.S. 475, 512 (1973) (Brennan, J., dissenting) (expressing concern for the prisoners who have little or no assistance from counsel and are seeking to remedy due process injuries). Justice Brennan stated in *Prieser* that "it is especially distressing that the remaining questions will have to be resolved on the basis of pleadings, whether in habeas corpus or suit under § 1983, submitted by state prisoners, who will often have to cope with these questions without even minimal assistance of counsel." *Id.* Since § 1983 has historically provided for the vast majority of civil rights claims brought by prisoners themselves, pro se plaintiffs might find the framework in *Edwards* to be a confusing and intimidating approach. *See* Koehn, *supra* note 130, at *4. Indeed, one critic of the judicial trend to limit prisoner claims has stated, "We have come full circle. Form has prevailed over substance and a gigantic charade has been erected to house the air. While courts pompously pontificate lofty constitutional dogma, prisoners are deluded into believ-

Although the Supreme Court may have clarified which § 1983 claims brought by prisoners are cognizable, in so doing the Court has severely limited the important federal protection of procedural due process. Because of the various potential problems *Edwards* may engender, one wonders whether more appropriate remedies to the statutory tension and judicial clog lay elsewhere.[145] For if the Court continues down this path, it will surely wash its hands completely of prisoners' due process rights.

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ing that which is not—is." Doumar, *supra* note 11, at 30.

[145] *See* Doumar, *supra* note 11, at 29. For instance, Congress could have provided an answer by statutorily amending § 1983. *See id.* The amendment might encourage a specific state grievance system, as well as a possible civil rights remedy in state court parallel "to a small claims court." *Id.* Judge Doumar suggests that such a statute might mandate exhaustion of state remedies only for those states that adopt these measures. *See id.* Access to federal litigation might then be limited to appeal from the highest state court to the Supreme Court. *See id.*