Correctional Officer Excessive Use of Force: Civil Liability Under Section 1983

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Correctional Officer Excessive Use of Force: Civil Liability Under Section 1983

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Abstract
Despite recent research demonstrating the impact of inmate perceptions of correctional legitimacy on order maintenance, the extant literature has failed to examine the contextual reality of correctional excessive use of force claims. Utilizing legal cases from the U.S. Court of Appeals and U.S. District Courts, this article examines correctional officer excessive use of non-deadly force and identifies recurring themes in these claims. Findings highlight the common occurrence of retaliatory violence, negative attitudes, failure to listen to inmate concerns, inadequate training, and an inability to decipher reliable threat cues consistently present in correctional officer use of non-deadly force claims. Suggestions for future research and policy implications are offered.

Keywords
Correctional officer, excessive use of non-deadly force, legal cases

Introduction
Title 42 U.S.C. Section 1983¹ for personal liability originating in excessive use of force claims has led to costly legal settlements and a loss of trust in corrections (Estate of Moreland v. Dieter, 2007; Guerra v. Drake, 2004;
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(Rangolan v. County of Nassau, 2004). As a result, excessive use of force remains a consistent concern for correctional administrators and policy makers, and more importantly, prisoners (Weitzer, 2002). Excessive use of force is operationally defined as any force, such as the utilization of physical force, chemical agents, electronic control devices, or restraints that is above and beyond what is necessary to control a confrontational situation (Carlson & Garrett, 2008). Outside of the obvious cases of death, research has demonstrated that excessive use of force also leads to injury, civil lawsuits, criminal indictments, and scrutiny by community leaders and media outlets (Johnson & Bridgmon, 2009). Recently, excessive use of force has been found to negatively impact prisoners’ perceptions of fairness within the American criminal justice system (Frankie, Bierie, & McKenzie, 2010).

To date, scholarly analyses of correctional officer excessive use of force do not exist. Several researchers (Hall, Ventura, Lee, & Lambert, 2003; Phillips, Hagan, & Rodriguez, 2006) have hypothesized that this lack of research may be a result of the difficulty in obtaining access to data, directly limiting the ability of empirical examinations and legislative review. Sever and Reisner (2008) noted that the reluctance of prison administrators to provide accurate data for reliable analysis of excessive use of force may be due to their desire to protect the image of the agency. Moreover, Abramsky and Fellner (2003) reiterate this lack of governmental and academic concern for excessive correctional use of force as evidenced by the few governmental (state or national) reports on correctional officer excessive use of force, and the nonexistent independent empirical examinations of this issue.

Despite a lack of empirical examinations, arguments have been put forth regarding the culture from which correctional officer excessive use of force flourishes. Marquart (1986) noted that excessive use of force is “deeply entrenched in the guard subculture” (p. 347). Providing support for this previously mentioned observation, a former Florida Warden observed that despite excessive use of force being a widespread systemic issue, there was a small group of violent officers beyond his control who abused prisoners (Commission on Safety and Abuse in America's Prison, 2006). Unfortunately, to date correctional officer excessive use of force remains outside the purview of both governmental inquiry and academic discourse.

The extant literature examining correctional officer subculture and legitimacy in corrections has attempted to understand the potential impact of excessive use of force. Toch (1978), through interviews of prison guards, and Marquart (1986), as a participant observer in a correctional facility, both contend that the correctional officer subculture supports an environment in which violence is not only accepted, but also reinforced. More recent scholarship offers that the indoctrination of new recruits during on-the-job training by
veteran officers is premised on the assumption that prisoners are less than human, ultimately leading to abusive officer–prisoner interactions (Souryal, 2009). In short, excessive use of force may serve to undermine inmates’ perceptions of fundamental fairness within corrections and, in particular, the criminal justice system, which may potentially lead to a host of outcomes, such as prison disturbances, inmate-on-staff assaults, and rule violations (Frankie et al., 2010; Henderson, Wells, Maguire, & Gray, 2010; Robertson, 2006). Although the previously cited studies have made significant contributions to the field of corrections, their research does not specifically focus on correctional officer excessive use of force. Rather, they highlight the use of physical coercion as a mechanism of prisoner control and procedural fairness related to prison officials’ treatment of prisoners. Because of the limited research on correctional officer excessive use of force and the challenges associated with obtaining accurate officer–prisoner interactions, this study seeks to determine critical issues relative to correctional officer excessive use of force legal cases. The focus of this examination will be on prisoner claims of Eighth Amendment violations of Section 1983 cases granted certiorari by the U.S. Court of Appeals and U.S. District Courts, as the utilization of legal cases allows for the understanding of an issue yet to be examined by empirical analysis.

**Eighth Amendment Claims of Excessive Use of Force**

The legal standard governing excessive use of force was established in *Hudson v. McMillian* (1992) and *Wilkins v. Gaddy* (2010). In *Hudson v. McMillian* (1992), the U.S. Supreme Court ruled that the use of excessive physical force against a prisoner may constitute cruel and unusual punishment even if the prisoner does not suffer serious injury. To prevail in an excessive use of force claim, prisoners must prove that prison officials were malicious and sadistic for the sole purpose of causing harm. Court judges must decide on four factors that are determinative of whether the use of force is malicious and sadistic: (a) the need for application of force, (b) the relationship between the need and the amount of force used, (c) the threat reasonably perceived by responsible officials, and (d) any efforts made to temper the severity of a forceful response (see *Johnson v. Glick*, 1973). According to Hoffman (2009), the Court in *Hudson* failed to define what constituted serious injury; and by analyzing legal cases, she noted that there was a discrepancy between lower courts either examining directly at the use of force applied maliciously and sadistically or deciding whether the prisoner received more than a minor injury. In *Wilkins v. Gaddy* (2010), the Court resolved this discrepancy between the courts by holding that all excessive use of force
claims must be decided on the nature of force, rather than the extent of the injury.

In summary, the purpose of this study was to examine correctional officer excessive use of force through a traditional inductive case-by-case doctrinal method (commonly referred to as doctrinal legal research or legal research), which seeks to determine the legal standard on a particular issue and how that legal parameter has been developed over time and/or applied in litigation (Acker & Irving, 1998; McConville & Wing, 2007). Several studies using this research design have been published (for a more extensive review, see Nolasco & Vaughn, 2011). This mode of inquiry was selected for its ability to identify possible individual factors that may contribute to correctional officer excessive use of force. Therefore, the uniqueness of this study is fourfold: (a) It is the first study to examine correctional officer excessive use of force; (b) It provides an examination of the manner by which courts interpret the malicious and sadistic standard as it relates to excessive use of force and decision making within correctional institutions; (c) This study identifies patterns or practices of excessive use of force, which can be beneficial to prison administrators when determining the appropriate administrative and management strategies to preserve and insure the assets of their organizations; and (d) By examining correctional officer excessive use of force, organizational changes can be implemented in training, supervision, departmental codes of conduct, and use of force policies to reduce the likelihood of civil liability.

**Method**

This study utilized Westlaw Campus Research computerized legal database to search for the following terms “EXCESSIVE”/P “USE OF FORCE”/P “HUDSON”/P “SECTION 1983” between 2001 and 2011 to gather cases decided by the U.S. Court of Appeals and U.S. District Courts. This time period was chosen to coincide with more current training trends, internal cultural practices, customs, traditions, and policies that might be familiar to criminal justice practitioners currently working in the field. A traditional inductive case-by-case doctrinal analysis was used to identify court decisions ruling that correctional officer use of force was applied sadistically and maliciously, violating the prisoner’s right to be free from cruel and unusual punishment (Nolasco & Vaughn, 2011; Tapia & Vaughn, 2010).

This research focuses on non-deadly use of force cases to identify characteristics of correctional officer excessive use of force or brutality. Cases involving deadly use of force are infrequently used and least likely to involve prisoner abuse, so were excluded. Given that the nature of the study is based on personal liability and state prisoners’ legal issues pertaining to pretrial
detainees and arrestees were excluded from the analysis. Forty-four legal cases involving personal liability for excessive use of force were identified. Of the 44 cases, 31 cases focused on correctional officers who were liable for excessive use of force. Accordingly, these legal cases were arranged according to the themes of use of non-deadly force against cooperative prisoners or use of non-deadly force against uncooperative prisoners as determined by the facts of the prisoner’s compliant.

**Use of Non-Deadly Force Against Cooperative Prisoners**

Correctional officers have legal authority under state law to use reasonable force to subdue prisoners who fail to comply with legitimate prison rules to maintain the safety and security of prisoners, staff, and the institution (Pizarro & Stenius, 2004). More often than not, the correctional officer subculture teaches officers to never trust prisoners. This attitude, coupled with stress that reduces their ability to resolve confrontations peaceably (Finn, 1998) and officers seen as fallible by their co-workers for helping prisoners (Kifer, Hemmens, & Stohr, 2003), creates conditions in which excessive use of force prevails. Under these circumstances, some correctional officers may exert excessive force to show a prisoner who has authority and power (Griffin, 2006; Marquart, 1986).

**Anger Rumination**

Anger is one’s emotional response to a provocation, but angry rumination involves thinking about anger and rehearsing retaliatory acts against the provocateur (Denson, Pedersen, & Miller, 2006). Research demonstrates that anger rumination increases the likelihood and severity of aggression (Denson, Pedersen, Friese, Hahm, & Roberts, 2011) and the likelihood that a minor triggering annoyance will increase displaced aggression (Bushman, Bonacci, Pedersen, Vasquez, & Miller, 2005). In *Moss v. Brown* (2010), Moss placed his arm through the food slot of his cell door after being denied a meal. As a result, Sergeant Ponder threatened to call a use-of-force team, which would result in a beating if he did not remove his arm from the food slot. In addition, Officer Brown threatened to break Moss’s arm to close the food slot if he did not comply with Sergeant Ponder’s order. Later, three officers, including Officer Brown, were ordered by Sergeant Ponder “to assist” Moss’s arm back into the cell. Moss asserted that two of the officers bent his fingers back, but Officer Brown used an excessive amount of force by twisting and snapping.
his finger, causing it to break. The Fifth Circuit held that Moss sufficiently stated a plausible claim for excessive use of force. In a similar use of force cases involving open food slots, the federal courts have found it to be malicious and sadistic under *Hudson v. McMillian* (1992) for correctional officers to intentionally strike the hands of prisoners with a baton (*Matthews v. Villella*, 2010), “yank” hands through food slots, and slam food slots on the hands of confined or handcuffed prisoners without penological justification (*Ducally v. Rhode Island Department of Corrections*, 2001; *Espinoza v. McDaniel*, 2007; *Morris v. Trevino*, 2008).

**Excessive Force and Suppression of First Amendment Rights**

“First Amendment rights to free speech and to petition the government for a redress of grievances are violated when a prisoner is punished for filing a grievance concerning his or her imprisonment” (*Boxer X v. Harris*, 2006, p. 1112). Nevertheless, Keel (2008) reported that 62% of the prisoners filing grievances reported subsequent retaliation by correctional officers and 35% did not file grievances for the fear of retaliation, despite having legitimate reasons. To prevail in a retaliation claim, prisoners must prove that (a) the speech or conduct at issue was protected, (b) the [officer] took adverse action against the [prisoner], and (c) there was a causal connection between the protected speech and the adverse action (*Dawes v. Walker*, 2001, p. 492). As explained in *Turley v. Gaetz* (2011), prisoner Turley filed grievances against several correctional officers for harassment and abusive conditions at the prison. As a result, Turley claimed that Officers Rednour, Cowan, and Spiller retaliated against him for filing grievances by placing him in protective custody. Turley was further retaliated against when he was issued a bogus disciplinary ticket for threatening an officer. After Turley’s disciplinary hearing, Officer Lindenburg escorted Turley to a room to await escort back to his housing location in protective custody. While Turley was standing in close proximity to a steel gate, Officer Lindenburg slammed the gate shut several times, causing Turley’s ear drum to pop, which resulted in head pain and temporary hearing loss. According to Turley, the door was not slammed when other prisoners were in the area, indicating that the door was capable of being closed in a normal manner and did not need to be slammed. The district court in Illinois agreed and found that factual issues in dispute precluded the state from dismissing the case because retaliating against a prisoner for filing grievances about conditions of confinement and the officer’s slamming the door only when Turley was alone in the room were actionable under Section 1983.
A prisoner’s First Amendment right to assist other prisoners with lawsuits and appeals was first recognized in Johnson v. Avery, 393 U.S. 483 (1969). This case law has resulted in an increase of prisoners, referred to as “Jail House Lawyers” or “Writ Writers,” performing services for other prisoners and possibly an increased likelihood that correctional officers will harass prisoners for their role as litigators. Such was the case in Clark v. Argutto (2007) when prisoner Clark claimed his attempt to enter the prison library caused a metal detector to sound. Officer Argutto told Clark to stand against the wall and stated that if he continued to file grievances and lawsuits, the staff would “make [his] life a living hell!” Clark requested to speak with a lieutenant. Officer Argutto shouted angrily, “Shut your [sic] . . . mouth, Litigator. The lieutenant doesn’t speak to shit like you!” Afraid that Officer Argutto would become physically violent, Clark attempted to leave to go to the office to speak with the operations lieutenant. As a result, Officers Argutto and Anderson instructed Clark to submit to hand restraints. Soon after, Officer Anderson repeatedly tightened the restraints on Clark’s hands for approximately 20 min, followed by Officer Ward kicking him to the ground. The Eleventh Circuit found that the evidence viewed in a light most favorable to Clark was sufficient to state an excessive use of force claim under the Eighth Amendment.

Split-Second Syndrome

Correctional officers are placed in potentially dangerous situations while executing their duties and responsibilities to maintain order. When officers are frightened, they are more likely to make mistakes that result in unnecessary use of force (Scharf & Binder 1983), especially when they only have a few seconds to react to prison disorder (Fyfe, 1989). As evidenced in Luke v. Lenz (2009), Officer Lenz arrived at Luke’s cell door to distribute his medication through the food slot. Luke’s right wrist was handcuffed to the cell door and his left hand was free to put his medication in his mouth. While Luke was taking his medication, Officer Lenz was conversing with prisoner Nieves. While Luke was trying to get Officer Lenz’s attention to inform him that he was finished, Nieves lied by yelling, “watch out! Luke is going to dash you Officer Lenz” (commonly referred to as prisoners throwing urine or feces or a combination of both on staff). In response, Officer Lenz spun around grabbing, pushing, and shoving Luke’s right and left arms back and forth through the food slot and then bringing all his body weight down on Luke’s forearm causing it to break, which caused Luke to collapse unconsciously to the floor. The district court in Wisconsin held that Officer Lenz used more force than
was necessary under the circumstances in violation of the Eighth Amendment’s cruel and usual punishment clause.

**Humiliation**

According to Klein (1991), “humiliation is what one feels when one is ridiculed, scorned, held in contempt, or otherwise disparaged for what one is rather than what one does. People believe they deserve shame; they do not believe they deserve humiliation” (p. 117). Moreover, the two case examples below represent correctional officers’ acts of humiliation, leading to excessive force claims under *Hudson*. As explained in *Arrington v. Goldberry* (2005), Officer Goldberry asked prisoner Arrington, “do you want a shower?” to which he replied “yes.” Officer Goldberry then threw ice and water into Arrington’s face, laughed, and slammed shut his cell door. A district court in Illinois held that factual issues precluded dismissal of the case at this point in the litigation under *Hudson v. McMillian* (1992).

In *Abreu v. Nicholls* (2010), Officer Nicholls took out a rubber-headed “hammer” from an office desk and stood in front of prisoner Abreu. Officer Nicholls said, “Didn’t I tell you not to look at me,” to which Abreu responded, “I’m not from this prison, I come from the state.” Officer Nicholls then began to press the hammer to Abreu’s forehead. Officer Nicholls told Abreu, “come on, do whatever you want,” but Abreu did not respond because other prisoners urged him to stay silent. Officer Nicholls pressed the hammer into Abreu’s head several times, causing his head to move half-way back. After a couple of minutes, Officer Nicholls removed the hammer from Abreu’s forehead and put it back into the desk drawer. The Second Circuit held that Officer Nicholls’ allegedly pressing the rubber hammer against Abreu’s forehead with enough force to bend his head back for the sole purpose of humiliation prevented the court from dismissing the case.

**Summary of Cooperative Prisoners Claiming Excessive Use of Non-Deadly Force**

Correctional officer use of non-deadly force against prisoners who pose no threat to the safety and security of the institutional and without penological interests can subject themselves to Section 1983 litigation. Federal courts have held correctional officers liable under *Hudson v. McMillian* (1992) for malicious and sadistic acts against confined and handcuffed prisoners, officers retaliating against prisoners for writing grievances, violence related to staff failing to control their anger, and correctional officers making poor
decisions in perceived dangerous situations. In the above cases, excessive force occurred during day time hours, mass movement, feeding time, escorts, after disciplinary hearings, and visits to the supervisor’s office. Several plausible explanations for excessive use of force exist based on the facts from the cases in this study: (a) correctional officers failed to listen, (b) correctional officers failed to consider a democratic style of supervision when interacting with prisoners; this does not mean that the authoritarian style should be abandoned entirely, (c) antagonism and oppression on part of the correctional officer, and (d) the inability to decipher reliable threat cues (the situation telling you that something is about to happen). Correctional agencies could have possibly prevented excessive use of force in these cases if proper administrative controls, ethics training, and training to combat correctional officer impunity were implemented.

**Use of Non-Deadly Force Against Uncooperative Prisoners**

Zimbardo (2007) argued that “any deed that any human being has ever committed, however horrible, is possible for any of us—under the right or wrong situational forces” (p. 211) may lead to correctional officer excessive use of force. Conversely, environmental, situational, personality, and attitudinal factors may also explain why individuals engage in certain behaviors (Krueger, 2009). The Commission on Safety and Abuse in America’s Prisons (2006) summarized this controversy within the correctional setting succinctly. That is, an individual’s fear and adrenaline rush can cause correctional officers to lose control and act more violently than necessary. Moreover, the constant threat of tumultuous disturbances within the corrections setting can lead officers to overreact and use more force than necessary to resolve a situation. Interestingly, regardless of empirical research, policy and procedures, and case law to curtail excessive use of force, rogue officers may still choose to participate in misconduct (Scogin & Brodsky, 1991; Vaughn, Cooper, & del Carmen, 2001).

**Failure to Intervene**

Correctional officers who fail to intervene become divided between their legal duty to intervene and the group subculture to keep silent; the latter may lead to ostracism, bullying, and even death threats if one decides to become a whistle-blower (Prenzler, 2009). Under Section 1983, correctional officers may be held liable for failing to stop other officers from using excessive use
of force in their presence, even if the excessive force is used by a supervisor (Weaver, 2010). In *Perry v. Monroe* (2009), prisoner Perry claimed that he was beaten with handcuffs by three correctional officers. After this went on for 5 min, Officer Dilday and an unknown sergeant told the other officers to “quiet that nigger up,” and move Perry to protective custody. At this point, Perry was attacked again, while Officer Dilday and the unknown sergeant watched and encouraged the attack. Based on the malicious standard, the district court of Illinois was unable to dismiss Perry’s claims for excessive use of force and failure to intervene.

Prison wardens having prior notice of, but failing to take corrective action of an officer’s previous incidences of excessive use of force, can be held liable under Section 1983 (Del Carmen, 1989). In *Locicero v. O’Connell* (2006), Officer Featherston summoned prisoner Locicero from his cell and scolded him for clenching his fists earlier that day. Without provocation on Locicero’s part, he was struck in the sternum, punched in the face, and repeatedly taunted and kicked by Officer Featherston. Locicero alleged that Warden O’Connell ignored the repeated malicious acts of Officer Featherston and, for all intents and purposes, he condoned it. In this case, the district court of New York denied the defendant’s motion to dismiss on grounds that Warden O’Connell was aware of Officer Featherston’s reprimands for misconduct toward other prisoners and his temporary removal from a prison program for malicious acts toward prisoners (see also *Mathews v. Crosby*, 2007; a warden was warned about a correctional officer who had violent tendencies, which later led to a prisoner being attacked and his jaw broken by a correctional officer).

**Retaliation**

The correctional officer subculture has a subset of correctional officers who will retaliate against prisoners without justification. Retaliation can take shape in the form of brutality, writing false disciplinary reports (*Hoskins v. Lenear*, 2005), trashing prisoner’s mail, denying meals or commissary, refusing showers, and transferring prisoners to less desirable cells (*Pratt v. Rowland*, 1995) or prisons (*Herron v. Harrison*, 2000). Researchers have found that anger (Brezina, 2010) and lower inhibitions (Baron & Hartnagel, 1997) create desires for retaliation and revenge. As exemplified in *Woods v. Lozer* (2006), prisoner Woods argued that he placed his arms through a food slot to have his handcuffs taken off, resulting in Officer Lozer pulling out a shiny object, and cutting his wrist to the bone. Officer Lozer testified that Woods pulled away from him while he was trying to remove the handcuffs. In the process of attempting to regain control, Woods injured to his arm and
Officer Werbeck injured his finger. The district court of Tennessee found that factual issues precluded Officer Lozer’s motion for summary judgment—the reason being that the injury Officer Werbeck sustained was at the outset of the altercation, prior to the alleged cutting of Wood’s arm.

**Misuse of Chemical Agents**

Pepper spray was designed and intended to quell prison disturbances and subdue prisoners, but its use has generated substantial controversy and public debate, linked with in-custody deaths (Granfield, Onnen, & Petty, 1994), allegations of intentional abuse, and overutilization (Smith et al., 2009). Failing to use chemical agents against prisoners prematurely, without a minimum amount of force, and a lack of precautionary measures to limit medical side effects can subject correctional officers to Section 1983 lawsuits. As explained in *Walker v. Bowersox* (2008), Officer Knarr used a pepper spray super-soaker, used for riot situations, to subdue prisoner Walker for refusing orders to return a food tray. Afterward, Walker was handcuffed to a bench and denied bathroom breaks, food, and water during the restraint. Furthermore, Walker was not allowed to shower or have clean clothes or bedding for 3 days, and he suffered a lengthy course of red, peeling, and itchy skin, necessitating the use of hydrocortisone cream for months. On appeal, the Eighth Circuit ruled that summary judgment should have been granted to Walker on his excessive force claims, as there were genuine factual disputes as to whether officers used force against him, including being pepper sprayed, after he had begun to comply with their orders. In addition, prisoner Walker was not warned before being pepper sprayed and given the opportunity to decontaminate himself.

Research demonstrates that the cause of death occurring after the use of chemical agents is generally the result of drug abuse, preexisting health conditions, and positional asphyxia (B. Taylor & Woods, 2010). The latter was the case in *Iko v. Shreve* (2008), in which a family brought a Section 1983 claim against prison officials for the death of their family member after a cell extraction in which correctional officers deployed pepper spray and transported prisoner Iko to the medical department. The nurse can be heard on the videotape commenting that Iko did not appear to be reacting to the pepper spray. After about a minute in the medical room, Iko suddenly collapsed forward. The officers caught Iko and directed him into a nearby wheelchair to transport him to his new cell. At no point did the nurse provide any medical treatment to Iko or even come into physical contact with him. Nor did the correctional officers at any point remove Iko’s spit mask or decontaminate him or his clothing that was saturated with pepper spray. Upon the arrival to
Iko’s new cell, correctional officers placed Iko face down on the floor. Later, correctional staff entered Iko’s cell and found him dead. A state medical examiner later concluded that Iko “died of positional asphyxia” (the asphyxia was caused by chemical irritation of the airways by pepper spray, facial mask placement, compressional and positional mechanisms). The Eighth Circuit held that the correctional officers were liable under *Hudson v. McMillian* (1992), because a practitioner would have inferred that using chemical agents in quantities greater than necessary to control the situation and a prisoner collapsing without receiving medical treatment was excessive force.

**Misuse of Conducted Energy Devices**

A major concern regarding the correctional deployment of conduct energy devices (CEDs) is whether the exposure can cause injury or death to officers and suspects. Unfortunately, no empirical study has examined the relationship between CEDs and injuries within the broader use-of-force context (Smith, Kaminski, Rojek, Alpert, & Mathis, 2007). As demonstrated in *Skrritch v. Thornton* (2002), an uncooperative prisoner was injured by an electronic shock shield, and afterward punched, kicked, and beaten. Several officers were called to prisoner Skritch’s cell to perform a cell extraction because Skritch refused to vacate his cell so it could be searched. The officers contended that Skritch was dangerous due to his custody level and history of disciplinary problems. Prisoner Skritch, however, conceded that some degree of force was lawful in light of his noncompliance with the officers’ order to submit to handcuffing so that the officers could search his cell. However, Skritch only challenged the assault that occurred after he had been incapacitated by repeated shocks of the electronic shield. The Eleventh Circuit denied the officers’ motion of summary judgment and qualified immunity under the malicious and sadistic standard.

The National Institute of Justice (2011) recommended that penal institutions should be aware of the medical risks (i.e., cardiac rhythm, respiratory, metabolic, excited delirium, and postevent medical care) associated with CEDs and that long duration or repeated shocks are associated with most deaths. Consequently, prolonged exposures to CEDs as a means to accomplish subdual should be minimized or avoided entirely. In *Rollen v. Horton* (2008), prisoner Rollen claimed that he was peppered sprayed by Officer Love, physically slammed to the wall and the floor by Officers Love, Klein, and Berry, choked by an unknown officer, and shocked with a Taser by another unknown officer for at least 5 min. The district court in Tennessee ruled that the excessive use of force claims against Officers Love, Klein, and Berry were actionable under Section 1983.
The # 15 Stinger Grenade (SG) is an explosive device widely used to control riotous prisoners. Upon detonation, the SG disperses rubber pellets and optional chemical agent in a circular pattern over a radius of 50 feet. Generally, the SG is utilized after chemical agents and impact munitions have not resolved disorder or routed prisoners. Correctional agencies failing to train staff in handling SGs may subject officers to Section 1983 lawsuits. In Jackson v. Gerl (2009), the district court in Wisconsin opined that Officer Gerl’s use of the stinger grenade was malicious and sadistic based on several factors. First, as prisoner Jackson weighed 135 pounds, he was less likely to pose a threat to the four officers who would enter his cell. All the correctional officers were larger than Jackson and wore body armor. Second, the likelihood of Jackson possessing a weapon seemed minimal (he and his cell had been searched earlier that day) and the danger caused by a weapon was mitigated by officers’ stab-proof armor. Third, prisoner Jackson was not creating immediate danger to any officer or himself or damaging property, as Officer Brown was able to tell from the skylight positioned above Jackson’s cell. Fourth, Officer Gerl deployed the stinger grenade knowing that Jackson was close to the door and did not tell him that his eyes could be injured, even after the nurse told Officer Gerl that the stinger grenade would do so. Finally, the video showed Officer Gerl dropping the grenade into Jackson’s cell and moving very quickly away from the cell, suggesting that she believed the force of the grenade could be substantial even outside the cell. Prisoner Jackson agreed to the settlement of US$49,000 to avoid a trial in U.S. District Court that had been scheduled later that week.

Failure to Consider Prisoner’s Health

The courts have consistently determined whether prisoner’s Eighth Amendment rights have been violated by assessing whether a correctional officer acted with “wantonness”: the need to apply force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm (Johnson v. Glick, 1973, p. 1033; Whitley v. Albers, 1986, p. 321). One could imagine a court’s application to correctional officers using excessive force to restrain a 60-year-old prisoner after refusing to look at his written medical excuse. As illustrated in Jackson v. Austin (2003), several officers ordered prisoner Jackson to stand in line. Jackson stood up and tried to show Officer Johnson a doctor’s note, which documented his medical restriction to
stay seated. However, Officer Johnson bumped Jackson in the chest and grabbed him and both individuals fell to the floor. Afterward, Officer Johnson grabbed Jackson, while Officer Austin grabbed Jackson’s bad leg, folding it over his right leg, and leaning his weight on it, causing excruciating pain. Officer Johnson then put Jackson in handcuffs, which were excessively tight and caused severe pain. The district court in Kansas held that the officers used excessive force to restrain Jackson. In violation of the Eighth Amendment, the officers were not entitled to qualified immunity and both officers had to pay prisoner Jackson US$15,000 in compensatory damages and US$30,000 in punitive damages for their wrongdoings.

Finally, in Steward v. Hoffman (2011), correctional officers responding to a medical emergency was called as a result of prisoner Steward’s side effects after he stopped taking his medication. Steward was then placed in handcuffs and escorted by Officers Hubler and Hoffman from his cell to a new living location. During the escort, Officers Hubler and Hoffman dragged Steward through the prison and slammed his head and shoulder into the gate of his new cell. Steward claimed that the officers’ actions amounted to excessive use of force. The district court in Illinois denied the officers’ motion to dismiss on the grounds that it was unclear whether the officers’ actions were part of a “good faith effort to maintain discipline,” or was done with malicious intent to cause pain. A similar situation occurred when prisoner Foulk was feeling the side effects of his seizure medication when corrections officers entered his room, aroused him, and ordered him to stand spread eagle against the wall and then deployed pepper spray directly into his face (Foulk v. Charrier, 2001).

**Unofficial Use of Force**

Marquart (1986) noted that unofficial use of force to control prisoners and willingness to exert power was imbedded in the correctional officer subculture. In Watts v. McKinney (2005) during an interrogation, prisoner Watts stated he did not know of any officers bringing in drugs or knives into the prison. Watts repeatedly stated he wanted his attorney present during this interrogation. Officer McKinney repeatedly threatened Watts and his family for not cooperating and stated to Watts that he will be sorry. After the interrogation, Officer McKinney escorted Watts to a holding cell and without warning slammed Watts’ face into the wall causing a nose bleed and swollen eye. Next, Officer McKinney kicked Watts in his penis and several times in his back while Watts was lying on the cell floor with handcuffs on and with his hands behind his back. During these events, Watts did not resist or threaten the Officer McKinney in any fashion or break any prison rules. Despite
Officer McKinney’s contention that Watts’ declaration if accepted as true states no violation of the Eighth Amendment and that “a reasonable correctional officer in Officer McKinney’s position would not necessarily have believed” that his conduct was unlawful. The Ninth Circuit disagreed and denied Officer McKinney’s motion for summary judgment and remanded for the case a new trial.

**Summary of Uncooperative Prisoners Claiming Excessive Use of Non-Deadly Force**

Federal courts have held correctional officers liable under *Hudson v. McMillian* (1992) for malicious and sadistic acts involving their failure to intervene, retaliation, misuse of pepper spray, conducted energy devices, and stinger grenades, unofficial use of force, and failing to consider prisoners’ health. In the above cases, excessive force occurred as a result of prisoners’ assaulting correctional officers, correctional officer impunity, prisoner disobeying orders, rogue officers, lack of precautionary measures to limit medical side effects, assaulting incapacitated prisoners, poorly developed use of force policies, and coercive interrogation techniques. Bowker (1983) speculated that some correctional officers will resort to excessive force to achieve dominance and enhance their self-image. Another possible explanation is that a prominently dominant White staff and a minority prison population will increase the probability of excessive use of force (M. L. Taylor, 2000). From a policing perspective, the fear of unknown, an organizational culture promoting violence, and adrenaline rush have been linked to excessive force (Reyes & Vaughn, 2009). Correctional agencies could have possibly prevented excessive use of force in these cases if training in conflict resolution, de-escalation, and anger management were implemented or if officers would have intervened and applied administrative controls to curtail impunity.

**Discussion**

The present study examined correctional officer excessive use of force in U.S. Court of Appeals and District Courts by analyzing legal cases under *Hudson v. McMillian* (1992), the case that set forth the malicious standard for determining liability of correctional officers under the Eighth Amendment. Due to the lack of empirical research on excessive use of correctional force, the present study sought to address this void by analyzing the facts of legal cases to identify categories or situations in which excessive use of force takes place. Previous research on institutional corrections has provided some
insight into the cultural predispositions of correctional institutions and their role in creating an environment whereby excessive use of force is permissible, but much of what does exist is outdated, theoretical, and anecdotal in nature (Hemmens & Stohr, 2001). The uniqueness of this study lies in its ability to identify patterns and practices of correctional officer excessive use of non-deadly force, providing prison administrators the much-needed information for determining appropriate administrative and management strategies to maintain institutional order.

Several key themes emerged in this analysis. Six of the eleven categories of excessive use of force involved correctional officers retaliating against prisoners. This notion of retaliatory violence is consistent with other research in the area of retaliatory homicide, which suggests that it is collectively tolerated, endorsed, and rewarded by groups as a means to resolve disputes (Kubrin & Weitzer, 2003). Another important theme was that many of the claims of civil liability could have been prevented if the correctional officers chose a democratic style of supervision or did not have negative attitudes toward prisoners. This finding is supported by Griffin (2002) who suggests officer’s readiness to use force was influenced by correctional officers’ attitudes toward inmates. Finally, the results of this study demonstrated that many of the Section 1983 claims were the result of the correctional officer’s inability to decipher a threat (the situation telling you that something is about to happen). This finding further supports the suggestions of several researchers (Blair et al., 2011) who argued that correctional officers need use-of-force training that focuses on the assessment of threat, so officers can respond to the perceived threat of violence and not the actual violence to reduce injuries, deaths, and litigation.

While addressing a critical void in the literature, our findings are subject to a few limitations. First, the manner in which the cases were categorized by the researchers could be debated. For example, the case of Rollem v. Horton (2008) that involves a prisoner who was pepper sprayed and repeatedly shocked with a Taser gun by correctional officers could be categorized as either “misuse of chemical agents” or “misuse of conducted energy control devices.” The researchers decided to categorize Rollem v. Horton (2008) under misuse of conducted energy control devices, given that the nature and extent of this category posed the greatest harm to the prisoner, compared with the misuse of pepper spray in the case. Further research should explore other legal cases with multiple allegations of correctional officer excessive use of force to improve our understanding and nature of force in examining correctional facilities. Our findings are further limited due to the use of the inductive case-by-case doctrinal design. The number of cases identified in this study was restricted by the choice of search terms and thus prone to selection...
bias. The selected legal cases were retrospective and the results cannot be generalized to all excessive use of force claims. Therefore, our findings of correctional officer’s actions toward prisoners in relation to excessive use of force are suggestive rather than exhaustive. Without evidence to the contrary, these findings, therefore, must be interpreted with caution. Future research should examine excessive use of force at a particular prison unit, a single correctional jurisdiction, and/or at the state or federal district level.

Despite these limitations, this research suggests several courses of action for reducing the risk of civil liability for correctional officer excessive use of force. First, there is a need for correctional agencies to (re)formulate their policies and training guidelines to convey the legal consequences of and disciplinary actions for retaliation. Correctional administrators should create a model for identifying, responding to, and resolving retaliatory behavior, coupled with ethics training to prevent retaliation in the workplace. If an agency already has these suggestions in place, future research should examine impunity through the relationship between prisoners’ filing grievances for retaliation and employee disciplinary reports for retaliation. Second, the results suggest that, for the most part, if correctional officers in these cases would have chosen a democratic style of supervision, the possibility of force may have been prevented, a suggestion that has been echoed by the recent literature (Frankie et al., 2010). Attempts to incorporate a democratic supervision style and improve use of force outcomes among correctional staff should focus on training correctional officers in multiple supervisory styles, de-escalation techniques, and effective listening, identifying supervision styles that are uniquely attuned to correctional staff–prisoner confrontation. Finally, correctional agencies should provide their officers with dynamic training, practice through realistic simulation to prepare officers how to handle non-deadly force situations (Olson, 1998).

Dynamic training utilizes role-playing scenarios that pit correctional officers against adversaries who enact prisoner scenarios, ranging from requests of necessities to staff assaults, and can involve judicial concerns or existing case law. Unlike other forms of training, dynamic training identifies real time deficiencies in correctional officer decision making. Although up to this date, analyses of correctional officer excessive use of force do not exist, research has proposed that certain “aspects of confinement such as treatment by staff, quality of programming, and interactions with other inmates were what caused prisoners to develop respect, faith, and confidence in the justice system” (Frankie et al., 2010, p. 110). Excessive use of correctional force threatens to undermine the established order of the institutional environment, potentially resulting in more rule-breaking and the inducement of resistance and vengeance.
Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

Notes

1. 42 U.S.C. Section 1983 states: 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, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

2. Having the nature of or resulting from malice; deliberately harmful; spiteful.

3. Extreme cruelty.

4. Food slot is a horizontal opening in a cell door used for passing food trays to offenders or for handcuffing offenders before opening cell doors, but small enough from keeping offenders from crawling through.

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