University of Baltimore Law Review

Volume 16
Issue 2 *Winter 1987*

Article 3

1987

Choosing the Appropriate State Statute of Limitations for Section 1983 Claims after Wilson v. Garcia: A Theory Applied to Maryland Law

Stephen J. Shapiro
University of Baltimore School of Law, sshapiro@ubalt.edu

CHOOSING THE APPROPRIATE STATE STATUTE OF LIMITATIONS FOR SECTION 1983 CLAIMS AFTER *WILSON V. GARCIA*: A THEORY APPLIED TO MARYLAND LAW

Stephen J. Shapiro†

Forty-two U.S.C. section 1983 provides individuals with a federal cause of action for violations of their constitutional rights by persons acting under color of state law. The statute itself contains no limitations period for the filing of suits and, in keeping with settled federal practice, the lower federal courts have looked to state law to determine the proper limitations period. Because the lower courts adopted various inconsistent approaches to determining the appropriate state limitations period, the Supreme Court, in Wilson v. Garcia, *held in 1985 that the federal courts should adopt the state limitations period for personal injury actions. In approximately half of the states, however, there are two limitations periods for personal injury actions: a shorter period for certain named intentional torts and a longer period for the residue of personal injury actions. The lower federal courts have split on the question of which of the two limitations periods should be applied. This article examines the rationale employed by the courts in selecting either the shorter or longer limitations period. The article then presents a theory that supports adoption of the longer, general personal injury limitations period rather than the shorter limitations period applicable to intentional torts. The article concludes with the application of this theory to Maryland statutory law.*

I. INTRODUCTION

Forty-two U.S.C. section 1983 (section 1983)[1] provides individuals with a federal cause of action for violations of their constitutional and other federal statutory rights by persons acting under color of state law.[2]

---

† B.A., 1971, Haverford College; J.D., 1976, University of Pennsylvania School of Law; Associate Professor, University of Baltimore School of Law.

1. 42 U.S.C. § 1983 (1982). Originally, section 1983 was part of the Civil Rights Act of 1871. Ch. 22, § 1, 17 Stat. 13.

2. 42 U.S.C. § 1983 provides:

> 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. 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.

42 U.S.C. § 1983 (1982).

Since the revival of the section 1983 cause of action in the 1960's,[3] federal courts have struggled to determine the proper statute of limitations for such actions. The judiciary has had to address the question because there is neither a statute of limitations contained in the text of section 1983 nor a federal statute of limitations specifically applicable to such actions.[4] Generally, when Congress fails to establish a statute of limitations for a federal cause of action, the settled federal practice has been to adopt a state limitations period, provided the state limitations period is not inconsistent with federal law or policy.[5] With regard to section 1983 and the other reconstruction civil rights statutes, Congress specifically has endorsed the adoption of state law where there is no federal rule by enacting 42 U.S.C. section 1988.[6]

Before *Wilson v. Garcia*,[7] the Supreme Court had held that federal courts must choose "the most appropriate"[8] or "the most analogous"[9]

---

3. Early Supreme Court cases interpreting the Reconstruction Civil Rights Acts had given these statutes a very narrow reach. *See* Civil Rights Cases, 109 U.S. 3 (1883); Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1873). In Monroe v. Pape, 365 U.S. 167 (1961), however, the Court held that the section 1983 remedy was supplementary to any state tort remedy, and that a plaintiff could bring a federal lawsuit regardless of whether relief might be available under state law. *Id.* at 183. The *Monroe* decision has led to a revival of the section 1983 suit that some commentators have refered to as a "flood" or "explosion" of such suits. Whitman, *Constitutional Torts*, 79 MICH. L. REV. 5, 6 (1980); McCormack, *Federalism and Section 1983: Limitations on Judicial Enforcement of Constitutional Protections, Part I*, 60 VA. L. REV. 1 (1974).
4. Wilson v. Garcia, 471 U.S. 261, 266 (1985).
5. *Id.* at 266-67 (citing Runyon v. McCrary, 427 U.S. 160 (1976)); Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696 (1966); Chattanooga Foundry & Pipe Works v. City of Atlanta, 203 U.S. 390 (1906); McClaine v. Rankin, 197 U.S. 154 (1905); Campbell v. Haverhill, 155 U.S. 610 (1895).
6. 42 U.S.C. § 1988 (1982). This statute provides, in part:

> The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause . . . .

42 U.S.C. § 1988 (1982).

Thus, section 1988 requires the courts to follow federal law if applicable. If no federal rule exists, then the applicable state law should be followed, unless the state law is inconsistent with the Constitution or federal law. Burnett v. Grattan, 468 U.S. 42, 47 (1984). Courts have adopted two solutions if the applicable state law is inconsistent with the Constitution or federal law. The court may choose another state law. *Id.* at 55. Alternatively, the court may create a federal common law rule. Robertson v. Wegmann, 436 U.S. 584, 590 (1978).
7. 471 U.S. 261 (1985).
8. Johnson v. Railway Express Agency, 421 U.S. 454, 462 (1975).

state statute of limitations for Civil Rights Act claims. The Court, however, provided little guidance regarding the mechanics of selecting the most appropriate or most analogous statute.[10] Courts generally took one of two approaches.[11] The first was a case-by-case approach in which the court would examine the facts of each section 1983 claim and apply the statute of limitations of the state law cause of action most analogous to that particular section 1983 claim.[12] This approach led to uncertainty and litigation because most section 1983 claims can be analogized to more than one state law cause of action, each of which may be governed by a different statute of limitations.[13] The other approach was to choose the state law cause of action most analogous to section 1983 claims and apply the statute of limitations for that cause of action to all section 1983 claims brought within the state.[14] Although this approach provided uniformity within a state, results varied from state to state because the federal circuits were able to analogize section 1983 claims to different state causes of action.[15]

In an attempt to bring uniformity to this unsettled area of the law, the Supreme Court held in *Wilson* that federal courts should select, in each state, "the one most appropriate statute of limitations for all § 1983 claims."[16] After reviewing the nature and purpose of section 1983 claims, the Court concluded that the most appropriate statute would be the statute applicable for personal injury tort actions.[17] The Court's effort to provide a uniform approach via this formula has been foiled, however, because many states do not have a single limitations period applicable to all personal injury actions. Approximately one-half of the states have one statute of limitations applicable to most personal injury actions, and a second, shorter statute of limitations applicable to certain

9. Board of Regents v. Tomanio, 446 U.S. 478, 488 (1980).
10. "[T]he Supreme Court has been singularly unhelpful in providing guidance on this important issue of federal law." Garcia v. Wilson, 731 F.2d 640, 643 (10th Cir. 1984).
11. For a circuit-by-circuit review on this question, see Garcia v. Wilson, 731 F.2d 640, 643-48 (10th Cir. 1984). *See also* Note, *Civil Rights: Determining the Appropriate Statute of Limitations for Section 1983 Claims*, 61 NOTRE DAME L. REV. 440, 442-43 (1986).
12. *See* Polite v. Diehl, 507 F.2d 119, 122 (3d Cir. 1974) (en banc) (court should apply the limitations period "which would be applicable in the courts of the state in which the federal court is sitting had an action seeking similar relief been brought under state law."); *accord* Shaw v. McCorkle, 537 F.2d 1289 (5th Cir. 1976); Johnson v. Dailey, 479 F.2d 86 (8th Cir.), *cert. denied*, 414 U.S. 1009 (1973).
13. *Wilson*, 471 U.S. at 272-73.
14. Pauk v. Board of Trustees, 654 F.2d 856, 866 (2d Cir. 1981), *cert. denied*, 455 U.S. 1000 (1982); Almond v. Kent, 459 F.2d 200, 204 (4th Cir. 1972).
15. *See, e.g., Pauk*, 654 F.2d at 866 (all section 1983 claims treated as actions on a liability created by statute); *Almond*, 459 F.2d at 204 (all section 1983 claims characterized as claims for personal injuries).
16. *Wilson*, 471 U.S. at 275.
17. *Id.* at 276. The Court then affirmed the use of a three-year statute of limitations governing actions "for injury to the person or reputation of any person." *Id.* at 280 (citing N.M. STAT. ANN. § 37-1-8 (1978)).

named intentional torts.[18] Among these states, federal courts have

18. Twenty-seven states have a statute of limitations for certain intentional torts different than the statute of limitations for most other personal injury actions. In all of these states except Alabama, the limitations period for intentional torts is the shorter of the two. States with such dual limitations periods include: Alabama: ALA. CODE § 6-2-38(l) (Supp. 1986) (two years for "any injury to the person or rights of another not arising from contract and not specifically enumerated"), ALA. CODE § 6-2-34(l) (1977) (six years "for any trespass to person or liberty, such as false imprisonment or assault and battery"); Arizona: ARIZ. REV. STAT. ANN. § 12-542 (Supp. 1986) (two years for "injuries done to the person of another"), ARIZ. REV. STAT. ANN. § 12-541 (1956) (one year for malicious prosecution, false imprisonment, libel, or slander); Arkansas: ARK. STAT. ANN. § 37-201 (Supp. 1985) (one year for assault and battery, false imprisonment, libel, and slander, alienation of affection or criminal conversation), ARK. STAT. ANN. § 37-206 (1962) (three years for "all actions . . . founded upon any contract, obligation, or liability"); District of Columbia: D.C. CODE ANN. § 12-301(4) (1981) (one year for libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest, and false imprisonment), D.C. CODE ANN. § 12-301(8) (1981) (three years for all other actions "for which a limitation is not otherwise specially prescribed"); Kansas: KAN. STAT. ANN. § 60-514(2) (1983) (one year for assault, battery, malicious prosecution, or false imprisonment), KAN. STAT. ANN. § 60-513(a)(4) (1983) (two years for injury to "the rights of another, not arising on contract and not herein enumerated"); Kentucky: KY. REV. STAT. ANN. §§ 413.140(1)(c),(d) (Baldwin 1979) (one year for malicious prosecution, arrest, criminal conversation, conspiracy, seduction, libel, or slander), KY. REV. STAT. ANN. § 413.120(7) (Baldwin 1979) (five years for an "injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated"); Maryland: MD. CTS. & JUD. PROC. CODE ANN. § 5-105 (1984) (one year for assault, battery, libel, or slander), MD. CTS. & JUD. PROC. CODE ANN. § 5-101 (1984) (three years for all civil actions unless "another provision of the Code" applies); Maine: ME. REV. STAT. ANN. tit. 14, § 753 (1980) (two years for assault, battery, false imprisonment, libel, slander, or malpractice), ME. REV. STAT. ANN. tit. 14, § 752 (1980) (six years for "all civil actions . . . except as otherwise specially provided"); Michigan: MICH. COMP. LAWS ANN. §§ 600.5805(2),(3),(7) (West 1987) (two years for assault, battery, false imprisonment, or malicious prosecution, one year for libel and slander), MICH. COMP. LAWS ANN. § 600.5805(8) (West 1987) (three years for "injury to a person or property"); Mississippi: MISS. CODE ANN. § 15-1-35 (Supp. 1986) (one year for assault, assault and battery, maiming, false imprisonment, malicious arrest, menace, libel, or slander), MISS. CODE ANN. § 15-1-49 (Supp. 1986) (six years for "all actions which no other period of limitations is prescribed"); Nebraska: NEB. REV. STAT. § 25-208 (1985) (one year for libel, slander, assault and battery, false imprisonment, and malicious prosecution), NEB. REV. STAT. § 25-207(3) (1985) (four years for "an injury to the rights of the plaintiff, not arising on contract, and not hereinafter enumerated"); New Jersey: N.J. STAT. ANN. § 2A:14-3 (West 1952) (one year for libel and slander), N.J. STAT. ANN. § 2A:14-2 (West 1952) (two years for "injury to the person caused by the wrongful act, neglect or default of any person"); New York: N.Y. CIV. PRAC. L. & R. § 215 (McKinney Supp. 1986) (one year for assault, battery, false imprisonment, malicious prosecution, libel, slander, and violation of privacy), N.Y. CIV. PRAC. L. & R. § 214 (McKinney Supp. 1986) (three years for "personal injury" actions); North Carolina: N.C. GEN. STAT. § 1-54(3) (1983) (one year for libel, slander, assault, battery, or false imprisonment), N.C. GEN. STAT. § 1-52(5) (1983) (three years for "criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereafter enumerated"); North Dakota: N.D. CENT. CODE § 28-01-18 (Supp. 1985) (two years for libel, slander, assault, battery, or false imprisonment), N.D. CENT. CODE § 28-01-16(5) (Supp. 1985) (six years for "criminal conversation or any other injury to the person or rights of another not arising upon contract, when not otherwise expressly provided"); Ohio:

reached inconsistent results in choosing the most appropriate limitations period. Some courts, emphasizing the broad range of section 1983 actions, have chosen the more general, usually longer limitations period applicable to most personal injury actions.[19] Other courts, relying on the historical reasons for the enactment of section 1983, the prevention of Ku Klux Klan violence, have chosen the special limitations period applicable to intentional torts.[20] To date, the Supreme Court has declined

---

OHIO REV. CODE ANN. § 2305.111 (Anderson Supp. 1985) (one year for assault or battery), OHIO REV. CODE ANN. § 2305.10 (Anderson Supp. 1985) (two years for any action for "bodily injury"), OHIO REV. CODE ANN. § 2305.11 (Anderson Supp. 1985) (one year for libel, slander, malicious prosecution, false imprisonment, or malpractice), OHIO REV. CODE ANN. § 2305.09 (Anderson Supp. 1981) (four years for "an injury to the rights of the plaintiff not arising on contract nor enumerated in [other sections]"); Oklahoma: OKLA. STAT. ANN. tit. 12, § 95 (West Supp. 1987) (one year for libel, slander, assault, battery, malicious prosecution, or false imprisonment), OKLA. STAT. ANN. tit. 12, § 95 (West Supp. 1987) (two years for "injury to the rights of another, not arising on contract, and not hereinafter enumerated"); Rhode Island: R.I. GEN. LAWS § 9-1-14(a) (1985) (one year for slander), R.I. GEN. LAWS § 9-1-14(b) (1985) (three years for "injuries to the person"); South Carolina: S.C. CODE ANN. § 15-3-550 (Law Co-op 1977) (two years for libel, slander, assault, battery, and false imprisonment), S.C. CODE ANN. § 15-3-530(5) (Supp. 1986) (six years for "criminal conversation or for any other injury to the person or rights of another, not arising on contract, not hereinafter enumerated"); South Dakota: S.D. CODIFIED LAWS ANN. § 15-2-15(1) (1984) (two years for libel, slander, assault, battery, or false imprisonment), S.D. CODIFIED LAWS ANN. § 15-2-13(5) (1984) (six years for "criminal conversation or any other injury to the rights of another not arising on contract and not otherwise specifically enumerated"); Tennessee: TENN. CODE ANN. § 28-3-103 (1980) (six months for slander), TENN. CODE ANN. § 28-3-104 (1980) (one year for all other actions for "injury to the person"); Texas: TEX. REV. CIV. CODE ANN. § 16.002 (Vernon 1986) (one year for malicious prosecution, libel, or slander), TEX. CIV. CODE ANN. § 16.003 (Vernon 1986) (two years for "personal injury"); Utah: UTAH CODE ANN. § 78-12-29(4) (1977) (one year for libel, slander, assault, battery, false imprisonment, or seduction), UTAH CODE ANN. § 78-12-25(2) (1977) (four years for "relief not otherwise provided for by law"); Virginia: VA. CODE § 8.01-248 (1984) (one year for malicious prosecution or abuse of process), VA. CODE § 8.01-243A (Supp. 1986) (two years for actions for "personal injuries"); Washington: WASH. REV. CODE. ANN. § 4.16.100 (1962) (two years for libel, slander, assault, assault and battery, or false imprisonment), WASH. REV. CODE ANN. § 4.16.080(2) (1962) (three years for "injury to the person or rights of another not hereinafter enumerated"); Wisconsin: WIS. STAT. ANN. § 893.57 (West 1983) (one year for libel, slander, assault, battery, invasion of privacy, false imprisonment, "or other intentional tort to the person"), WIS. STAT. ANN. § 893.54(1) (West 1983) (three years for "injuries to the person"); Wyoming: WYO. STAT. § 1-3-105(v) (1977) (one year for libel, slander, assault, battery, malicious prosecution, or false imprisonment), WYO. STAT. § 1-3-105(a)(iv)(C) (1977) (four years for any "injury to the rights of the plaintiff, not arising on contract and not herein enumerated").

19. *See, e.g.*, Small v. Inhabitants of Belfast, 796 F.2d 544 (1st Cir. 1986); Carroll v. Wilkerson, 782 F.2d 44 (6th Cir.), *cert. denied*, 107 S. Ct. 330 (1986).
20. *See, e.g.*, Jones v. Preuit & Mauldin, 763 F.2d 1250 (11th Cir. 1985), *cert. denied*, 106 S. Ct. 893 (1986); Gates v. Spinks, 771 F.2d 916 (5th Cir. 1985), *cert. denied*, 106 S. Ct. 1376 (1986); Mulligan v. Hazard, 777 F.2d 340 (6th Cir. 1985), *cert. denied*, 106 S. Ct. 2902 (1986).

three opportunities to resolve this split among the circuits.[21]

Maryland is one of the states that has a dual limitations period for personal injury actions. Most tort claims for personal injuries are governed by Maryland's three-year general statute of limitations.[22] Actions for assault, battery, libel, or slander are subject to a one-year limitations period.[23] The Fourth Circuit is yet to rule which of these statutes of limitations is most appropriate for section 1983 actions.

This article proposes that the general three-year limitations period should govern section 1983 actions in Maryland. The article first describes the holding and reasoning of the Supreme Court's decision in *Wilson v. Garcia*. It then examines the application of *Wilson* by lower courts in states that have statutory limitations periods that are different for negligent torts and intentional torts. The article then develops a theory, consistent with *Wilson*, that could be applied where states have two limitations periods. Finally, the article applies this theory to Maryland's statutes of limitations and proposes that, in applying *Wilson*, the Fourth Circuit should adopt Maryland's general three-year statute of limitations for all section 1983 actions brought in the state.

II. *WILSON V. GARCIA*

In *Wilson v. Garcia,*[24] the plaintiff brought a section 1983 action in federal district court against a New Mexico state police officer and the Chief of the State Police, seeking damages for an allegedly unconstitutional arrest and beating.[25] The complaint was filed two years and nine months after the incident occurred.[26] The defendant moved to dismiss the complaint, claiming that the action was barred by the two-year limitation period of the New Mexico Tort Claims Act,[27] which the Supreme Court of New Mexico earlier had held to be applicable to section 1983 actions brought in that state.[28] The federal district court held that the decision of the state supreme court was not controlling because "characterization of the nature of the right being vindicated under section 1983 is a matter of federal, rather than state, law."[29] Instead, the court held that all section 1983 actions should be characterized as actions based on

21. Carroll v. Wilkerson, 782 F.2d 44 (6th Cir. 1986), *cert. denied*, 107 S. Ct. 330 (1986); *Mulligan*, 777 F.2d 340; *Jones*, 763 F.2d 1250.
22. MD. CTS. & JUD. PROC. CODE ANN. § 5-101 (1984) (includes all negligent and some intentional torts).
23. MD. CTS. & JUD. PROC. CODE ANN. § 5-105 (1984).
24. 471 U.S. 261 (1985).
25. *Id.* at 263.
26. *Id.*
27. *Id.* This section provides: "Actions against a governmental entity or a public employee for torts shall be forever barred, unless such action is commenced within two years after the date of the occurrence resulting in loss, injury or death. . . ." N.M. STAT. ANN. § 41-4-15(A) (1978).
28. DeVargas v. New Mexico, 97 N.M. 563, 642 P.2d 166 (1982).
29. Wilson v. Garcia, 471 U.S. at 264 (citing Appendix to Petition for Writ of Certiorari).

statute.[30] Because New Mexico had no specific statute of limitations governing statutory claims, the court held that the limitations period of the three-year residual statute should be applied.[31] Accordingly, the court denied the motion to dismiss. The court, however, certified an interlocutory appeal under 28 U.S.C. section 1292(b).[32]

After accepting the interlocutory appeal and hearing the case *en banc*, the United States Court of Appeals for the Tenth Circuit affirmed the district court's order denying the motion to dismiss.[33] The reasoning of the Tenth Circuit, however, was different from the reasoning used by the district court. The Tenth Circuit held that, for purposes of the statute of limitations, all section 1983 claims should be characterized as actions for injuries to personal rights.[34] Therefore, the Tenth Circuit applied the New Mexico three-year limitations period applicable to personal injury actions,[35] and held that the complaint had been filed in a timely manner.

Recognizing the confusion in the lower courts, the Supreme Court granted certiorari.[36] After concluding that 42 U.S.C. section 1988 directs courts to adopt a local limitations period for section 1983 actions, the Court considered two questions in determining the most appropriate statute of limitations for this claim. The Court first considered whether state or federal law governs the characterization of section 1983 claims for statute of limitations purposes.[37] The Court concluded that Congress intended the characterization of section 1983 claims to be measured by federal rather than state standards because of the need for uniform law.[38] The Court then considered "whether all § 1983 claims should be characterized in the same way, or whether they should be evaluated differently depending upon the varying factual circumstances and legal theories presented in each individual case."[39] The Court observed that, historically, state limitations periods for analogous state causes of action were adopted to honor the state's balancing of the policies of repose with the policies of enforcement embodied in the state cause of action.[40] The Court recognized, however, that because section 1983 is a uniquely federal remedy[41] that can override certain state laws, it can have no precise

30. *Id.*
31. *Id.* at 280. N.M. STAT. ANN. § 37-1-4 (1978) provides: "all other actions not herein otherwise provided for and specified [must be brought] within four years."
32. Wilson v. Garcia, 471 U.S. at 264.
33. Garcia v. Wilson, 731 F.2d 640, 651 (10th Cir. 1984).
34. *Id.*
35. *Id.* N.M. STAT. ANN. § 37-1-8 (1978) provides: "Actions . . . for an injury to the person or reputation of any person [must be brought] within three years."
36. Wilson v. Garcia, 469 U.S. 815 (1984).
37. 471 U.S. at 268.
38. *Id.* at 270 (quoting Chardon v. Fumero Soto, 462 U.S. 650, 667 (1983) (Rehnquist, J., dissenting)).
39. *Id.* at 268.
40. *Id.* at 271.
41. *Id.* at 271-72 (quoting Mitchum v. Foster, 407 U.S. 225, 239 (1972)).

counterpart in state law.[42] Therefore, the Court concluded that analogies to state or common law causes of action "are bound to be imperfect."[43]

This recognition caused the Court to determine that a single, broad characterization of all section 1983 claims is best suited to the statute's remedial purpose.[44] A broad characterization avoids the problems of uncertainty and time-consuming litigation that had been plaguing the case-by-case approach.[45] The Court found that the case-by-case approach had proved unsatisfactory because many section 1983 claims are analogous to more than one of the common law causes of action, each of which may be governed by a different limitations period.[46] In that regard, the Court catalogued the many diverse constitutional claims that could form the basis for section 1983 suits, finding that two or more periods of limitations could apply to each section 1983 claim.[47] The Court concluded that in the interests of uniformity, certainty, and the minimization of unnecessary litigation,[48] section 1988 should be construed as a directive for federal courts to select, in each state, the single most appropriate statute of limitations for all section 1983 claims.[49]

The Court agreed with the Tenth Circuit that for purposes of the statute of limitations, all section 1983 claims should be treated as tort actions for the recovery of damages for personal injuries.[50] According to the Court, the choice of this limitations period was "supported by the nature of the section 1983 remedy, and by the federal interest in ensuring that the borrowed period of limitations not discriminate against the federal civil rights remedy."[51] In reaching this decision, the Court reviewed the history of the Civil Rights Act of 1871, which Congress had passed to counter the violent acts committed against southern blacks by the Ku Klux Klan. The Court observed that the "atrocities that concerned Congress in 1871 plainly sounded in tort."[52] Although the Court acknowledged that section 1983 encompasses a broad range of potential tort analogies, ranging from injury to property to infringements of individual liberty,[53] the Court reasoned that Congress would have considered section 1983 remedies to be more analogous to personal injury claims than to claims for property damage or breach of contract.[54] Therefore, the Court determined that had the Forty-Second Congress considered the

42. *Id.* at 272 (citing Monroe v. Pape, 365 U.S. 167, 196, n. 5 (Harlan, J., concurring)).
43. *Id.* at 272.
44. *Id.*
45. *Id.*
46. *Id.* at 272-73.
47. *Id.* at 273-74.
48. *Id.* at 275.
49. *Id.*
50. *Id.* at 276.
51. *Id.*
52. *Id.* at 277.
53. *Id.*
54. *Id.*

issue, "it would have characterized § 1983 as conferring a general remedy for injuries to personal rights."[55]

After choosing to characterize section 1983 claims as claims for personal injury, the Court explained that periods of limitation for statutory claims and for state law remedies for wrongs committed by public officials were inappropriate for section 1983 claims. As to statutory claims, the Court determined that, because statutory claims were relatively scarce when section 1983 was enacted, it is unlikely that Congress would have intended to apply these subsequently enacted periods of limitations to statutory claims.[56] As for state law causes of action for wrongs committed by public officials, the Court reasoned that such a characterization might allow the state to thwart the federal remedy by selecting a shorter statute of limitations for such claims.[57]

The *Wilson* Court's express purpose in ruling that there should be one limitations period in each state for section 1983 actions was to avoid the uncertainty and litigation caused by the case-by-case approach. The Court sought to achieve uniformity within each state, doctrinal consistency from state to state, and a limitations period on par with a major part of each state's civil litigation.[58] The Court recognized that the inconsistency of having the section 1983 limitations period vary from state to state could not be avoided because Congress had determined that state law should apply even though the limitations period for personal injury

---

> The unifying theme of the Civil Rights Act of 1871 is reflected in the language of the Fourteenth Amendment that unequivocally recognizes the equal status of every "person' subject to the jurisdiction of any of the several States. The Constitution's command is that all "persons' shall be accorded the full privileges of citizenship; no person shall be deprived of life, liberty, or property without due process of law or be denied the equal protection of the laws. A violation of that command is an injury to the individual rights of the person. (footnote omitted).

Id.

55. *Id.* at 278.
56. *Id.* Moreover, the Court took the position that most section 1983 claims are not actually statutory claims at all. "Section 1983, of course, is a statute, but it only provides a remedy and does not itself create any substantive rights." *Id.* Although a few section 1983 claims are based on statute, most are based on Constitutional rights. The Court noted: "These guarantees of liberty are among the rights possessed by every individual in a civilized society, and not privileges extended to the people by the legislature." *Id.* at 278-79.
57. In this regard, the Court stated:

> The characterization of all § 1983 actions as involving claims for personal injuries minimizes the risk that the choice of a state statute of limitations would not fairly serve the federal interests vindicated by § 1983. General personal injury actions, sounding in tort, constitute a major part of the total volume of civil litigation in the state courts today, and probably did so in 1871 when § 1983 was enacted. It is most unlikely that the period of limitations applicable to such claims ever was, or ever would be, fixed in a way that would discriminate against federal claims, or be inconsistent with federal law in any respect.

Id. at 279.
58. *Id.* at 275.

actions might vary between the states.[59] Despite this inherent problem, the Court hoped to achieve at least a settled limitations period within each state. The Court failed to anticipate, however, that in some states the lower federal courts would have difficulty in choosing the state limitations period for personal injuries due to the existence of two limitations periods.

III. CONFUSION IN APPLYING *WILSON V. GARCIA*

Generally, federal courts in states where one statute of limitations applies to all claims for personal injury have applied the rule of *Wilson v. Garcia* with ease.[60] Where states have differing limitations periods depending upon whether the personal injury arose from negligent or intentional conduct, however, the federal courts have had difficulty in applying the *Wilson* rule. Approximately one-half of the states have one statute of limitations for certain named intentional torts and a second statute of limitations for all other claims of injuries to personal rights.[61] Some courts have applied the limitations period for intentional torts on the theory that section 1983 was enacted to counter the intentionally tortious conduct of the Ku Klux Klan.[62] Other courts, emphasizing the

59. The only way to achieve complete uniformity of statutes of limitations in all section 1983 cases regardless of the state in which the action is brought is for Congress to amend 28 U.S.C. § 1988 and to provide by statute a single limitations period for all section 1983 claims. Commentators have recommended such amendment. *See* Note, *Civil Rights: Determining the Appropriate Statute of Limitations for Section 1983 Claims*, 61 NOTRE DAME L. REV. 440, 452 (1986). Congress, however, has refused to enact a number of bills that would have adopted a uniform statute of limitations for all section 1983 actions. *See, e.g.*, S. 436, 99th Cong., 1st Sess. (1985); S. 1983, 96th Cong., 1st Sess. (1979); H.R. 12874, 94th Cong., 2d Sess. (1976).

60. *See, e.g.*, Berndt v. Tennessee, 796 F.2d 879 (6th Cir. 1986) (one-year period under Tennessee law); McMillan v. Goleta Water Dist., 792 F.2d 1453 (9th Cir. 1986) (one-year period under California law); DeNardo v. Murphy, 781 F.2d 1345 (9th Cir. 1986) (Alaska two-year period); Knoll v. Springfield Township School Dist., 763 F.2d 584 (3rd Cir. 1985) (Pa. two-year period).

A separate area of dispute among the circuits has been whether the *Wilson* opinion should be applied retroactively to cases which have been filed but not decided. *Compare* Mulligan v. Hazard, 777 F.2d 340 (6th Cir. 1985), *cert. denied*, 106 S. Ct. 2902 (1986) (*Wilson* to be applied retroactively) *with* Gibson v. United States, 781 F.2d 1334 (9th Cir. 1986), *cert. denied*, 107 S. Ct. 928 (1987) (*Wilson* not to be applied retroactively to shorten statute of limitations). The Supreme Court recently addressed the retroactivity issue in Goodman v. Lukens Steel Co., 107 S. Ct. 2617 (1987), a case involving the appropriate statute of limitations for cases brought under another civil rights statute, 28 U.S.C. § 1981. After first holding that section 1981, like section 1983, should be governed by the state statute of limitations for personal injury actions, the Court held that the Pennsylvania two-year statute of limitations should be applied retroactively, since there had been no "clear precedent" in the state adopting a longer statute. 107 S. Ct. at 2622.

61. *See supra* note 18.

62. Jones v. Preuit & Mauldin, 763 F.2d 1250 (11th Cir. 1985), *cert. denied*, 106 S.Ct 893 (1986); Gates v. Spinks, 771 F.2d 916 (5th Cir. 1985), *cert. denied*, 106 S. Ct. 1376 (1986); Mulligan v. Hazard, 777 F.2d 340 (6th Cir. 1985), *cert. denied*, 106 S. Ct 2902 (1986).

broad range of present day section 1983 claims, have applied the more general tort statute.[63]

This confusion never would have arisen had the Supreme Court chosen to grant certiorari, not to *Wilson*, but to one of two other cases decided by the Tenth Circuit the same year as *Wilson*: *Hamilton v. City of Overland Park*[64] and *Mishmash v. Murray City*.[65] In *Wilson*, the Supreme Court agreed with the Tenth Circuit that for statute of limitations purposes, all section 1983 cases should be treated as actions for injury to personal rights.[66] The states in which the two other Tenth Circuit actions were filed, however, had more than one statute of limitations for personal injury actions. In *Hamilton*, a case arising in Kansas, the Tenth Circuit had to choose between two statutorily prescribed limitations periods for personal injury. In Kansas, a one-year limitations period applies to actions for "assault, battery, malicious prosecution, or false imprisonment,"[67] whereas a two-year limitations period applies to actions for "injury to the rights of another, not arising on contract, and not herein enumerated."[68] The Tenth Circuit chose to apply the latter, two-year statute of limitations on the ground that "all section 1983 claims should be characterized as actions for injury to the rights of another."[69] In *Mishmash*, a case arising in Utah, the court also was confronted with two statutes of limitations for personal injury actions: a one-year statute which governs actions for "libel, slander, assault, battery, false imprisonment or seduction,"[70] and a four-year statute for all personal torts not specifically mentioned in the one-year statute.[71] Because the court found no Utah statute "expressly applicable to actions for injury to the rights of another,"[72] it applied the four-year statute of limitations.[73] Had the Supreme Court granted certiorari in either *Hamilton* or *Mishmash*, it would have had to address the issue of which personal injury statute of limitations should be applied in situations where there are two limitations periods under state law. Courts in states with two limitations periods, one for intentional torts and one for other torts,

63. Small v. Inhabitants of Belfast, 296 F.2d 544 (1st Cir. 1986); *accord* Carroll v. Wilkerson, 782 F.2d 44 (6th Cir.), *cert. denied*, 107 S. Ct. 330 (1986).

64. Hamilton v. City of Overland Park, 730 F.2d 613 (10th Cir. 1984), *cert. denied*, 471 U.S. 1052 (1985).

65. Mishmash v. Murray City, 730 F.2d 1366 (10th Cir. 1984), *cert. denied*, 471 U.S. 1052 (1985). *Hamilton* and *Mishmash* were appealed to the Supreme Court at approximately the same time as *Wilson*. The Court denied certiorari in those cases the same week it issued the *Wilson* opinion.

66. *Wilson*, 469 U.S. at 276.

67. KAN. STAT. ANN. § 60-514(2) (1983).

68. KAN. STAT. ANN. § 60-513(a)(4) (1983).

69. Hamilton v. City of Overland Park, 730 F.2d 613, 614 (10th Cir. 1984), *cert. denied*, 471 U.S. 1052 (1985).

70. UTAH CODE ANN. § 78-12-29(4) (1977).

71. *Mishmash*, 730 F.2d at 1367.

72. *Id.*

73. UTAH CODE ANN. § 78-12-25(2) (1977).

would have been provided with clear guidance in determining which limitations period to apply in section 1983 actions.

The first court to address the limitations' problem after *Wilson* was the Eleventh Circuit in *Jones v. Preuit & Mauldin*.[74] In *Jones*, the court was forced to choose between two Alabama statutes of limitations. A six year limitations period applied to actions "for any trespass to person or liberty, such as false imprisonment or assault and battery."[75] A one-year statute applied to actions for "any injury to the person or rights of another not arising from contract and not specifically enumerated in this section."[76] The court recognized that not all section 1983 claims redressed intentional deprivations of constitutional rights and that some section 1983 claims will sound in trespass and others in trespass on the case.[77] The court decided to apply the six-year trespass statute, which covered most intentional torts, because "personal injuries sounding in trespass make up the most significant subset of claims within Section 1983."[78] The court observed that the typical personal injuries covered by the statute, those that motivated the Congressional enactment, were acts of intentional and direct violence on the part of the Ku Klux Klan.[79] The court held, therefore, that the longer statute of limitations period applied and that, consequently, the suit was not time barred.[80]

It is unfortunate that *Jones* was the first case to reach the federal courts after *Wilson*. The Alabama statutes at issue in *Jones* provided a significantly longer statute of limitations for intentional torts than for negligent torts. In every other state, however, the limitations period for intentional torts is *shorter* than that provided for negligent torts.[81] Some courts deciding subsequent cases, however, have tended to follow the *Jones* rationale despite this significant distinction.

Gates v. Spinks,[82] the next case to address this issue, is illustrative of this tendency. In *Gates*, the Fifth Circuit had to decide which of two Mississippi statutes of limitations to apply. The Fifth Circuit expressly

74. 763 F.2d 1250 (11th Cir. 1985).
75. ALA. CODE § 6-2-34(1) (1975). The Alabama courts had applied this six-year limitations period to what had been trespass actions under the common law, that is, intentional acts done with force and immediately injurious to the person or property of another. C.O. Osborn Contracting Co. v. Alabama Gas Corp., 273 Ala. 6, 135 So. 2d 227 (1961).
76. ALA. CODE § 6-2-39(a)(5) (1975). This statute was repealed in 1985 and replaced with a two-year statute, now codified at ALA. CODE § 6-2-38(1) (Supp. 1986). The one-year limitations period has been applied to actions for trespass on the case, defined as a wrongful act causing harm only indirectly or without an intentional act of force. Smith & Santon Funeral Directors v. Dean, 262 Ala. 600, 80 So. 2d 222 (1958); *Jones*, 763 F.2d at 1254 n.4 (citing W.T. Ratliff Co. v. Henley, 405 So. 2d 141 (Ala. 1981)).
77. *Jones*, 763 F.2d at 1255.
78. *Id.*
79. *Id.*
80. *Id.* at 1256.
81. Garcia v. Wilson, 731 F.2d 640, 651 (10th Cir. 1984).
82. 771 F.2d 916 (5th Cir. 1985).

adopted the reasoning of the Eleventh Circuit in *Jones* and chose to apply a one-year statute, which it found applicable to most, if not all, common law intentional torts,[83] rather than a six-year residual statute governing most unintentional tort actions, including negligence actions and most strict liability actions.[84] The court agreed with the Eleventh Circuit's reasoning that Congress's intent in enacting section 1983 was to stem intentional violence.[85] The Fifth Circuit did not confine itself to this historical analysis, however. The court focused on the broader range of present day section 1983 actions and stated that "[m]ost 1983 actions are predicated on intentional rather that negligent acts."[86]

Although the holding and reasoning of *Jones* and *Gates* are similar, the results necessarily differ because of the difference between Alabama and Mississippi law. As noted above, Alabama law is quite unusual in that the statute of limitations for intentional torts is longer than the limitations period for negligent torts.[87] In Mississippi, as in every other state with dual limitations periods, the limitations period for intentional torts is significantly shorter than that for other torts. If courts in those states find that the statute of limitations for intentional torts is the appropriate statute for section 1983 actions, the result would be a comparatively short limitations period for section 1983 actions.[88]

Although both the Eleventh and Fifth Circuits applied the limitations period for intentional torts, the First Circuit took a different approach in *Small v. Inhabitants of Belfast*.[89] In determining which of Maine's statutes of limitations should apply to section 1983 actions, the First Circuit decided not to apply Maine's two-year limitations period for the intentional torts of assault and battery, and for false imprisonment, slander, libel, and malpractice of physicians.[90] Instead, the court applied

83. *Id.* at 919. MISS. CODE ANN. § 15-1-35 (1972) provided that "all actions for assault, assault and battery, maiming, false imprisonment, malicious arrest, or menace, and all actions for slanderous words concerning the person or title, and for libels, shall be commenced within one year next after the cause of action accrued, and not after."

84. *Gates*, 771 F.2d at 919 (citing MISS. CODE ANN. § 15-1-49 (1972) (six year residual statute)). The court affirmed the dismissal of the case because it was not filed within one year of the accrual of the cause of action. *Gates*, 771 F.2d at 920.

85. *Id.* at 919. "There is no room for disagreement with the Eleventh Circuit that '[t]he paradigmatic personal injuries covered by the statute, those that motivated the Congress to take action, were acts of intentional and direct violence on the part of the Ku Klux Klan.'" *Id.* (quoting Jones v. Preuit & Mauldin, 713 F.2d 1250, 1255 (11th Cir. 1985)).

86. *Id.* at 920.

87. *See supra* note 18 and accompanying text.

88. Of the twenty-seven states that have a different statute of limitations for intentional torts than for other personal injury actions, twenty have a limitations period for intentional torts of one year or less. In twenty-five of the twenty-seven states with dual limitations periods, the period for intentional torts is either one-half or one-third the length of the period for other personal injury actions. *See supra* notes 60-87 and accompanying text.

89. 796 F.2d 544 (1st Cir. 1986).

90. *See* ME. REV. STAT. ANN. tit. 14, § 753 (1964).

Maine's six-year limitations period used for virtually all other personal injury claims.[91] In choosing Maine's longer unintentional tort limitations period, the First Circuit focused on the present day myriad assortment of section 1983 claims[92] rather than on the historical basis for section 1983 claims. According to the First Circuit, the Supreme Court had characterized section 1983 claims as personal injury claims "in an effort to encompass the broad range of potential tort analogies section 1983 has been used to invoke."[93]

Nevertheless, not all courts faced with a statutory scheme similar to Maine's have reached the same result. Indeed, the Sixth Circuit has reached seemingly inconsistent results when faced with similar state statutes. In *Mulligan v. Hazard*,[94] one Sixth Circuit panel applied Ohio's one-year statute applicable to actions for libel, slander, assault, battery, malicious prosecution, false imprisonment, or malpractice,[95] rather than the two-year statute applicable to actions "for personal injury."[96] As had the Eleventh Circuit in *Jones* and *Gates*,[97] this panel looked to the historical basis for section 1983 and reached the conclusion that the statute applicable to actions involving assaults and batteries "more specifically encompasses the sorts of actions which concerned Congress as it enacted the civil rights statutes."[98] In *Carroll v. Wilkerson*,[99] however, a different Sixth Circuit panel applied Michigan's three-year statute of limitations

---

91. Small v. Inhabitants of Belfast, 796 F.2d 544, 546-47 (1st Cir. 1986) (quoting ME. REV. STAT. ANN. tit. 14, § 752 (1964)):

> All civil actions shall be commenced within 6 years after the cause of action accrues and not afterwards, except actions on a judgment or decree of any court of record of the United States, or of any state or of a justice of the peace in this State, and except as otherwise specially provided.

ME. REV. STAT. ANN. tit. 14, § 752 (1964). The court, therefore, reversed the dismissal of a police officer's suit for deprivation of his property interest in his position without due process. *Small*, 796 F.2d at 550.

92. *Small*, 796 F.2d at 546.

93. *Id.* The court noted that the Supreme Court in *Wilson* had listed many examples of the "numerous and diverse topics and subtopics" that had been the subject of section 1983 suits. *Id.* (quoting Wilson v. Garcia, 471 U.S. at 273). The court stated:

> These suits are not easily characterized as "trespass" claims or "trespass on the case" claims, nor does the "intentional" - "unintentional" dichotomy contribute to the analysis of many claims, such as those based on challenged legislation or regulations. These suits are not primarily or even nearly analogous to assault and battery, false imprisonment, or defamation. At best, these suits can only be characterized very generally as claims involving "personal injuries."

Small, 796 F.2d at 546.

94. 777 F.2d 340 (6th Cir. 1985), *cert. denied*, 106 S. Ct. 2902 (1986).

95. OHIO REV. CODE ANN. § 2305.11 (Anderson 1981). This statute has been amended. *See supra* note 18 for the current versions of the Ohio statutes of limitations.

96. OHIO REV. CODE ANN. § 2305.10 (Anderson 1981).

97. *See supra* text accompanying notes 74-86.

98. Mulligan v. Hazard, 777 F.2d 340, 344 (6th Cir. 1985), *cert. denied*, 106 S. Ct. 2902 (1986).

99. 782 F.2d 44 (6th Cir.), *cert. denied*, 107 S. Ct. 330 (1986).

for personal injury claims,[100] even though Michigan had shorter limitations periods for assault, battery, or false imprisonment,[101] malicious prosecution,[102] and libel or slander.[103] Although the court was aware of the *Mulligan* decision,[104] it did not discuss the apparent split within the circuit on this issue. This discrepancy did not escape Justice White, however, who used it as the basis of his dissent from the denial of certiorari in *Carroll*.[105] Justice White would have granted certiorari in order to resolve the confusion over which state statute of limitations should be applied in section 1983 cases when more than one state statute addresses such claims.[106]

IV. PROPOSED THEORY

Courts choosing to apply the statute of limitations for intentional torts have emphasized that the Forty-Second Congress, in passing section 1983, was trying to remedy the intentional violence of the Ku Klux Klan.[107] Courts choosing to apply the limitations period for other personal injury actions have emphasized the broad range of present day section 1983 actions.[108] The Supreme Court's opinion in *Wilson v. Garcia*[109] does not clarify which approach should be taken because the opinion emphasizes both the historical basis of section 1983[110] and the broad range of present day actions.[111]

In *Wilson*, the Court noted that Congress's purpose in borrowing the appropriate state statute of limitations for section 1983 claims was to incorporate "the State's judgment on the proper balance between the policies of repose and the substantive policies of enforcement embodied in the state cause of action."[112] If the goal of section 1988 is to honor each state's judgment regarding limitations periods, the statute of limitations should be based on the type of cases that actually are being brought under section 1983, rather than on the type of case that Congress had thought might be brought when it enacted the statute more than a hundred years ago.[113]

---

100. MICH. COMP. LAWS ANN. § 600.5805(8) (West 1986).
101. *Id.* § 600.5805(2) (West 1986) (two years).
102. *Id.* § 600.5805(3) (West 1986) (two years).
103. *Id.* § 600.5805(7) (West 1986) (one year).
104. The *Carroll* court followed the *Mulligan* court's decision to apply *Wilson* retroactively. Carroll v. Wilkerson, 782 F.2d 44, 45 (6th Cir.), *cert. denied*, 107 S. Ct. 330 (1986).
105. County of Wayne v. Carroll, 107 S. Ct. 330, 330 (1986) (White, J., dissenting).
106. *Id.* at 330 (White, J., dissenting).
107. *See supra* text accompanying notes 82-86.
108. *See supra* text accompanying notes 93-97.
109. 471 U.S. 261 (1985).
110. *Id.* at 275, 276, 278.
111. *Id.* at 273.
112. *Id.* at 271.
113. "When § 1983 was enacted [more than 100 years ago], it is unlikely that Congress actually foresaw the wide diversity of claims that the new remedy would ultimately embrace." *Id.* at 275.

If the broader range of modern day section 1983 claims is used for analogy, the most "analogous" statute of limitations in most states should be that of general personal injury actions rather than that of intentional torts.[114] In the overwhelming majority of states with dual limitations periods for personal injury actions, certain named intentional torts are subject to a shorter statute of limitations, while all other personal injury actions are subject to a longer limitations period.[115] In such states, the limited number of named intentional torts would not seem to be most analogous to the broad range of present day section 1983 actions.

The number of intentional torts covered by the specific statute varies from state to state. The most narrow statutes cover only slander, or libel and slander,[116] and obviously would not be most analogous to all section 1983 claims. A more typical statute covers libel, slander, assault, battery, and either or both malicious prosecution and false imprisonment.[117] The broader the coverage of the intentional tort statute, the stronger the argument that it is the most analogous to section 1983 actions. For example, a statute such as that in Maryland,[118] which applies only to actions for assault, battery, libel, or slander, would cover fewer section 1983 actions than a statute that also covers malicious prosecution and false imprisonment.[119]

It is debatable whether a statute covering a broad range of intentional torts such as assault, battery, libel, slander, malicious prosecution, and false imprisonment or a residuary statute of all other personal injury actions, is most analogous to section 1983 claims. On the one hand, many section 1983 claims, including most of those listed by the Supreme Court in *Wilson v. Garcia*, bear no relationship to intentional torts.[120]

---

114. Even if the "paradigmatic" section 1983 action contemplated by the 42d Congress is chosen to provide the analogy, an argument still can be made, at least in those states that have a limitations period applicable to only a few intentional torts, that such torts are not the most analogous to section 1983 actions. *See infra* text accompanying notes 154-55 for an explanation of this argument.

115. *See supra* note 18, for a compilation of all states with dual statutes of limitations for torts.

116. *See, e.g.*, N.J. STAT. ANN. § 2A:14-3 (West 1952); R.I. GEN. LAWS § 9-1-14(a) (1985); TENN. CODE ANN. § 28-3-103 (1980).

117. *See, e.g.*, MICH. COMP. LAWS ANN. § 600.5805 (Supp. 1986); NEB. REV. STAT. § 25-208 (1985); N.C. GEN. STAT. § 1-54(3) (1983); N.D. CENT. CODE § 28-01-18 (Supp. 1985); OKLA. STAT. ANN. tit. 12, § 95 (West Supp. 1987); S.C. CODE ANN. § 15-3-550 (Law Co-op 1976); S.D. CODIFIED LAWS ANN. § 15-2-15 (1984); WASH. REV. CODE ANN. § 4.16.100 (1962); WYO. STAT. § 1-3-105(v) (1977).

118. *See, e.g.*, MD. CTS. & JUD. PROC. CODE ANN. § 5-105 (1984).

119. See *supra* states listed in note 117.

120. In *Wilson v. Garcia*, the Supreme Court gave a partial listing of the "numerous and diverse topics" covered by section 1983 suits:

> [D]iscrimination in public employment on the basis of race or the exercise of First Amendment rights, discharge or demotion without procedural due process, mistreatment of schoolchildren, deliberate indifference to the medical needs of prison inmates, the seizure of chattels without advance notice or sufficient opportunity to be heard —to identify only a few. [footnotes omitted].

On the other hand, many section 1983 claims are brought against law enforcement officers for excessive use of force and similar claims that are analogous to assault, battery, and false imprisonment. Notwithstanding, given the Supreme Court's emphasis of the "broad range of potential tort analogies,"[121] it seems that even a fairly broad intentional tort statute is not as analogous to section 1983 claims as is a statute that applies to all other injuries to the rights of another.

Another reason exists for choosing the more general personal injury statute of limitations over the statute applicable to intentional torts. Even in states where it might be argued that the intentional tort statute is the most "analogous" to section 1983 claims, it may not be the most "appropriate" statute to use. Although the Supreme Court sometimes uses the two terms interchangeably,[122] it is unclear whether the most analogous statute is always the most appropriate statute. In one case, for example, *Burnett v. Gralton*,[123] the Court indicated that there may be a distinction. In *Burnett*, employees of a Maryland state college brought suit under sections 1981, 1983, 1985, and 1986, claiming racial discrimination in employment. The federal district court dismissed the claims as barred by the six-month limitations period applicable to a Maryland statute prohibiting racial discrimination in employment.[124] Without disputing that the state employment discrimination statute was the cause of action most analogous to the actual suit being brought by the plaintiffs,[125] the Supreme Court refused to apply the six-month limitations period for filing an administrative complaint under the state statute to the section 1983 claim. The Court held that the state statute was not "appropriate" because it failed "to take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil Rights Acts."[126] The Court noted

---

469 U.S. at 273. With the possible exception of "mistreatment of schoolchildren," which might be similar to an assault and battery claim, none of the claims listed by the court bear much resemblance to either assault, battery, libel, slander, malicious prosecution, or false arrest.

121. *Id.* at 277.

122. In Johnson v. Railway Express Agency, 421 U.S. 454 (1975), the Court spoke of using the "most appropriate" statute of limitations. *Id.* at 462. In Board of Regents v. Tomanio, 446 U.S. 478 (1980), the Court used the term "most analogous." *Id.* at 488. In *Wilson*, 471 U.S. 261, the Court used both terms together: "the selection of 'the most appropriate' or 'the most analogous' state statute of limitations to apply to this § 1983 claim." *Id.* at 268.

123. 468 U.S. 42 (1984).

124. Md. Ann. Code art. 49B, § 14 (1929).

125. Because *Burnett* was a pre-*Wilson* case, the courts were searching for the state cause of action most *analogous* to the specific section 1983 claim actually being brought, rather than the present task of trying to choose one state statute of limitations for all section 1983 claims. *See supra* text accompanying notes 12-13. It was clear that the state employment discrimination statute was the most analogous to the federal case.

126. *Burnett*, 468 U.S. at 50. The Court conducted the three-step process for determining state law under 42 U.S.C. § 1988. *See supra* note 6. The Court determined, under the second step, that the six-month period was inappropriate, rather than

that "[s]tate legislatures do not devise their limitations period with national interests in mind,"[127] and that the reasons for which a legislature chooses a specific limitations period for a state cause of action may not apply to section 1983 cases.[128] The *Burnett* opinion suggests that one must analyze the state's reasons for choosing a limitations period for a specific cause of action. If those reasons are inconsistent with the goals of section 1983, then the statute is not the most appropriate, no matter how analogous the two causes of action.[129]

Analyzing a legislature's motives in adopting a particular limitations period is exceedingly difficult, however.[130] There is often a paucity of legislative history because many statutory schemes for limitations periods are recodifications of statutes that have remained virtually unchanged for long periods of time.[131] Even modern day state legislative history is sparse; for older statutes it is virtually nonexistent. Another difficulty in determining a legislature's motives is that, as noted by one commentator, the selection of a particular limitations period often "reflects a fairly complex mixture of purposes, some of which overlap and some of which may be partly inconsistent with others."[132]

The reason usually cited for statutes of limitation is that defendants should not be forced to defend lawsuits after the facts have become stale and evidence difficult to procure.[133] One reason for designating a short

---

holding, under the third step, that it was inconsistent with the Constitution or federal law. The Court did note, however, that "the second and third steps of the § 1988 inquiry shade into each other." *Burnett*, 468 U.S. at 53 n.15.

127. *Id.* at 52 (quoting Occidental Life Ins. Co. v. EEOC, 432 U.S. 355, 367 (1977)).

128. The Court stated:

> For instance, the length of a limitations period will be influenced by the legislature's determination of the importance of the underlying state claims, the need for repose for potential defendants, considerations of judicial or administrative economy, and the relationship to other state policy goals. To the extent that particular state concerns are inconsistent with, or of marginal relevance to, the policies informing the Civil Rights Act, the resulting state statute of limitations may be inappropriate for civil rights claims.

Id. at 53.

129. The clearest example of this situation occurs when a state passes a statute of limitation explicitly applicable to federal civil rights actions. In Johnson v. Davis, 582 F.2d 1316 (4th Cir. 1978), the Fourth Circuit rejected a one-year Virginia statute of limitations expressly applicable to section 1983 claims. This holding was cited with approval in Burnett v. Grattan, 468 U.S. 42, 53, n.15. The holding of *Wilson v. Garcia* by implication clearly rejects the use of state statutes of limitations passed specifically to apply to section 1983 claims.

130. *See* Callahan, *Statutes of Limitations — Backround*, 16 OHIO ST. L. J. 131 (1955).

131. Developments in the Law, *Statutes of Limitations*, 63 HARV. L. REV. 1177, 1185 (1950). For example, the basic Maryland scheme of a one-year limitations period for assault, battery, libel, or slander and a three-year period for most other causes of action has remained virtually unchanged since it was enacted in 1715. *See* 1 Kilty, Laws of Maryland, Chap. XXIII, No. II, April 1715.

132. Callahan, *supra* note 130, at 132-33.

133. Developments in the Law, *Statutes of Limitations*, 63 HARV. L. REV. 1177, 1185 (1950). A defendent "ought not to be called on to resist a claim when 'evidence has

period of limitations for certain intentional torts may be a legislative determination that evidence in such cases would be forgotten or would become unavailable sooner than evidence in other types of tort actions. If this were the case, then one would expect that there would be a shorter limitations period for slander, which applies to more easily forgotten spoken words, than for libel, which usually applies to more permanent written words. That most of the statutes in question provide the same limitations period for libel as for slander[134] tends to refute the notion that the underlying rationale for the statutes is the transitory nature of evidence.[135] One commentator has suggested that the actual reason for varying periods of limitations, is "the relative favor with which the legislature looks upon certain types of claims or certain classes of plaintiffs or defendants."[136] Thus, the rationale underlying special statutes providing for relatively short periods of a year or less may be simply legislative disfavor of the action or a policy in favor of particularly quick settlement.[137]

If legislatures in states that have a shorter statute of limitations for intentional torts than for most other actions have chosen the shorter period of limitations because of disfavor of intentional tort actions, such motives would not be appropriate for federal civil rights actions. State legislatures may not act to disfavor federal civil rights actions. In fact, the Supreme Court, in *Wilson v. Garcia*, chose personal injury actions as the most appropriate analogy for statute of limitations purposes because of the "federal interest in ensuring that the borrowed period of limitations not discriminate against the federal civil rights remedy."[138] As stated by the Court:

> The characterization of all § 1983 actions as involving claims for personal injuries minimizes the risk that the choice of a state statute of limitations would not fairly serve the federal interests vindicated by § 1983. General personal injury actions, sounding in tort, constitute a major part of the total volume of civil litigation in the state courts today, and probably did so in 1871 when § 1983 was enacted. It is most unlikely that the period of limitations applicable to such claims ever was, or ever would be, fixed in a way that would discriminate

---

been lost, memories have faded, and witnesses have disappeared,' " *Id.* (quoting Order of R.R. Telegraphers v. Ry. Express Agency, 321 U.S. 342, 349 (1944).

134. *But see* TENN. CODE ANN. § 28-3-103 (1980); R.I. GEN. LAWS § 9-1-14(b) (1985).

135. *See* Callahan, *supra* note 136, at 134. One also might expect actions for assault, where there usually will be no physical evidence of damages to the plaintiff to have a shorter limitations period than actions for battery, where plaintiff usually will have sufferred some physical harm. This also is not the case. *See supra* note 18.

136. Leflar, *The New Conflicts-Limitations Act*, 35 MERCER L. REV. 461, 470 (1984) (quoting Developments in the Law, *Statutes of Limitations*, 63 HARV. L. REV. 1177, 1185-86 (1950)).

137. Developments in the Law, *Statutes of Limitations*, 63 HARV. L. REV. 1177, 1180 (1950).

138. Wilson v. Garcia, 471 U.S. 261, 276 (1985).

against federal claims, or be inconsistent with federal law in any respect.[139]

Intentional torts, however, do not constitute "a major part of the total volume of civil litigation"[140] in the courts. In many states, intentional torts have been given statutes of limitations considerably shorter than those for most other actions, including all other personal injury actions. Of the twenty-seven states having limitations periods different for intentional torts than for other personal injury actions, all states but one provide a limitations period for intentional torts that is significantly shorter than that provided for other personal injury actions.[141] Choosing such statutes of limitation discriminates against federal civil rights actions by treating them as clearly disfavored, rather than typical state causes of action.

The narrower the class of intentional torts singled out by the state for inclusion in the shorter statute of limitations, the more discriminatory the result.[142] Even a statute such as Mississippi's, however, which prescribes a shorter than usual limitations period for most, if not all, intentional torts, is not the broad statute of limitations the *Wilson* Court thought it was adopting by choosing the limitations period for personal injury actions. If the shorter limitations period were chosen by the state legislature because of a hostility toward intentional tort actions, or in an effort to give defendants in such actions a limited exposure to liability,[143] then such limitations periods should not be chosen for section 1983 actions.

In summary, courts faced with choosing between a limitations periods for certain intentional torts and a limitations period for other personal injury actions should choose the more general personal injury statute. When a state legislature has chosen to grant a shorter limitations period for intentional torts than for most other tort actions, then the intentional tort statute is neither the most analogous to nor the most appropriate statute of limitations for section 1983 actions. The narrower the list of intentional torts and the greater the discrepancy in limitation periods between intentional torts and all other torts, the stronger the argument that the intentional tort statute is not the proper choice.

---

139. *Id.* at 279.

140. *Id.*

141. *See supra* note 18.

142. This is obviously not intentional discrimination, such as when a state passes a short statute of limitations explicitly applicable to section 1983 actions, because the state could not have known, when it passed the statute, that it would be applied to federal civil rights actions. The discriminatory effect, however, is the same. Johnson v. Davis, 582 F.2d 1316 (4th Cir. 1978).

143. This is, of course, another reason why legislatures choose short statutes of limitations. However, awarding defendants in federal civil rights actions only a short period before they may obtain repose also does not seem consistent with the policies of the Civil Rights Acts, and was, in fact, rejected by the Supreme Court in Burnett v. Grattan, 468 U.S. 42, 54-55 (1984).

V. APPLICATION TO MARYLAND LAW

Maryland, like many of the states discussed in this article, has a statute of limitations applicable to some intentional torts that is different from the limitations period applicable to most other personal injury actions. Section 5-105 of the Annotated Code of Maryland provides a one-year limitations period for "assault, battery, libel, or slander."[144] Virtually all other personal injury actions are governed by Maryland's general three-year statute of limitations.[145] Under the theory proposed in the preceding section, the three-year statute is both the most analogous and most appropriate statute to be applied to section 1983 claims.

The Maryland intentional tort statute, covering only assault, battery, libel, and slander, is narrower than any other statute yet confronted by the federal courts in this context. Moreover, not only is the statute narrow by its terms, the courts have been unwilling to extend the statute to other intentional torts. In *Hector v. Weglein*,[146] the United States District Court for the District of Maryland applied the one-year limitations period to a claim for assault and battery, but refused to extend it to claims for false arrest, false imprisonment, and malicious prosecution. The court applied the general three-year statute to these latter claims.[147] Similarly, in *Robinson v. Vitro Corp.*,[148] another federal district court judge was requested to apply the one-year statute of limitations to an action for intentional infliction of emotional distress because of its alleged similarity to the torts enumerated in section 5-105.[149] The court refused, citing the policy of the Court of Appeals of Maryland to construe strictly the statutes of limitations.[150] Aside from assault and battery, the only other tort to which the federal district court in Maryland has been willing to extend section 5-105 is false light invasion of privacy, where, be-

144. "An action for assault, battery, libel, or slander shall be filed within one year from the date it accrues." MD. CTS. & JUD. PROC. CODE ANN. § 5-105 (1984).

145. "A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." MD. CTS. & JUD. PROC. CODE ANN. § 5-101 (1984). Most of the other exceptions to the three-year limitations period are not applicable to the present situation. *See, e.g.*, § 5-102 (twelve-year period for actions on judgments or instruments under seal); § 5-103 (twenty-year period for adverse possession); § 5-104 (five-year period for action on public officer's bond); § 5-108 (twenty-year period for injuries occurring after completion of improvement to realty); § 5-109 (three-or five-year period for malpractice actions against physicians).

146. 558 F. Supp. 194 (D. Md. 1982).

147. *Id.* at 207.

148. 620 F. Supp. 1066 (D. Md. 1985).

149. *Id.* at 1072.

150. The district court stated:

> The Maryland Court of Appeals has further cautioned that 'where the Legislature has not made an exception in express words in the Statute of Limitations, the Court cannot allow any implied and equitable exception to be engrafted upon the Statute merely on the ground that such exception would be within the spirit or reason of the statute.'

Id. (quoting McMahan v. Dorchester Fertilizer Co., 184 Md. 155, 160, 40 A.2d 313, 316 (1944)).

cause of the overlap with libel and slander, "[t]o hold otherwise would allow a plaintiff, in any defamation action where there has been a general publication to avoid the otherwise applicable one-year statute merely by phrasing the cause of action in terms of invasion of privacy."[151]

If one compares the narrow range of torts covered by section 5-105 with the wider variety of present day section 1983 actions, it is clear that section 5-105 is not the most analogous statute, because it would govern only a small fraction of such actions.[152] For this reason, the Maryland statute is distinguishable from the intentional tort statutes of Alabama, Mississippi, and Ohio, which have been held to be applicable to section 1983 actions.[153]

Even if section 5-105 is compared with the action with which Congress hoped to counter the intentional and direct violence against southern blacks, it probably still is not the most analogous statute. Although many section 1983 actions against the Ku Klux Klan of the 1930's might have been for assault and battery, others would have constituted false arrest, malicious prosecution, or other intentional torts not covered by the Maryland statute. In fact, because section 1983 contains a requirement that the defendants act under color of state law,[154] actions to redress directly the assaults committed by the Ku Klux Klan might not

---

151. Smith v. Esquire, Inc., 494 F. Supp. 967, 970 (D. Md. 1980). *Accord* Robinson v. Vitro Corp., 620 F. Supp. 1066, 1070 (D. Md. 1985). Unlike the traditional invasion of privacy tort that involved statements that were true, the "comparatively new" false light invasion of privacy action requires, as does defamation, a false statement. A.S. Abell Co. v. Barnes, 258 Md. 56, 69 n.7 265 A.2d 207, 215 n.7 (1970). The only real difference between false light invasion of privacy actions and defamation actions is that the former requires public as opposed to mere private publication. Hence, many defamation cases also would constitute false light invasion of privacy claims, thus justifying the courts' fear that defamation plaintiffs could avoid the applicable one-year limitation period merely by renaming their tort.

152. In *Wilson v. Garcia*, the Supreme Court stated that the list of claims brought under section 1983,

> [W]ould encompass numerous and diverse topics and subtopics: discrimination in public employment on the basis of race or the exercise of First Amendment rights, discharge or demotion without procedural due process, mistreatment of schoolchildren, deliberate indifference to the medical needs of prison inmates, the seizure of chattels without advance notice or sufficient opportunity to be heard — to identify only a few.

471 U.S. at 273 (1985).

153. The Alabama statute applied to "any trespass to person or liberty." Jones v. Preuit & Mauldin, 763 F.2d 1250, 1254 (11th Cir. 1985), *cert. denied*, 106 S. Ct. 893 (1986) (quoting ALA. CODE § 6-2-39(a)(5) (1975)); the Mississippi statute applied to actions "for assault, assault and battery, maiming, false imprisonment, malicious arrest, or menace, and all actions for slanderous word concerning the person or title, and for libels," Gates v. Spinks, 771 F.2d 916, 919 (5th Cir. 1985) (quoting MISS. CODE ANN. § 15-1-35 (1972)); the Ohio statute, the narrowest of the three, still covered "libel, slander, assault, battery, malicious prosecution, false imprisonment or malpractice." Mulligan v. Hazard, 777 F.2d 340, 343 (6th Cir. 1985) (quoting OHIO REV. CODE ANN. § 2305.11 (Anderson 1983)).

154. *See* Monroe v. Pape, 365 U.S. 167 (1961).

always have been available.[155] The section 1983 action envisioned by Congress may not have been an assault and battery action against private citizens, but an action against public officials or municipalities for encouraging or participating in such acts. Although the actions of such state defendants usually would be intentional, they would not be limited necessarily to assaults and batteries. Therefore, section 5-101, which governs virtually all other personal injury actions except for assault, battery, libel, and slander, seems analogous to present day section 1983 actions as well as to those section 1983 actions contemplated at its passage.

Another reason for choosing the three-year period of section 5-101 over the one-year period of section 5-105 is that the narrow one-year limitation is inappropriate for section 1983 actions to the extent that it discriminates against federal civil rights actions. As noted above, when a state legislature has singled out a few causes of action for shorter limitations periods, there is a strong likelihood that the state disfavors such causes of action.[156] The one-year Maryland statute applies only to four torts, two of which, libel and slander, are normally disfavored.[157] It may be inferred, therefore, that the short limitations period was intended to discourage these kinds of claims, not to protect against vanishing evidence.[158] Applying the shorter statute of limitations to section 1983 actions would be inappropriate inasmuch as the states may not disfavor 1983 actions.

The three-year limitations period of section 5-101, which applies to the majority of personal injury actions in Maryland, both intentional and unintentional, is the more appropriate period to be applied to section 1983 actions. The Supreme Court in *Wilson* chose "general personal injury actions"[159] as the most appropriate for section 1983 claims not only because they were most analogous to section 1983 claims, but also because they "constitute a major volume of civil litigation in the state courts today, and probably did so in 1871 when § 1983 was enacted."[160] By choosing the three-year limitations period of section 5-101, the federal courts will be ensuring that federal civil rights plaintiffs will be receiving

155. Private persons may be held liable under section 1983 only if they conspire with governmental officials. *See* Adickes v. S. H. Kress and Co., 398 U.S. 144 (1970).

156. *See supra* text accompanying notes 147-48.

157. Libel and slander often are considered disfavored actions and given shorter statutes of limitations. *See* Developments in the Law, *Statutes of Limitations*, 63 HARV. L. REV. 1177, 1180 (1950). For more stringent pleading requirements, see 5 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 1245, at 217 (1969) ("the standard for successfuly pleading defamation tends to be more stringent than ordinary civil suits because of the unfavored nature of this type of action").

158. There is no actual legislative history available on this point, because the basic Maryland statute of limitations scheme has remained virtually unchanged since its original passage in 1715. *See* 1 Kilty, Laws of Maryland, Chap. XXIII, No. II, April 1715.

159. 471 U.S. at 279.

160. *Id.*

treatment similar to the majority of other plaintiffs suing to redress personal injuries in the Maryland courts.

VI. CONCLUSION

In *Wilson v. Garcia*, the Supreme Court failed to resolve the difficulties experienced by the lower federal courts in determining how to select the proper state statute of limitations for section 1983 claims. Although the Court specified that the proper limitations period should be the state limitations period for personal injury actions, this instruction has provided no guidance in the many states where there are two limitations periods for personal injury claims. The lower federal courts continue to grapple with this problem and the federal courts of appeals have divided on the question.

A correct reading of the *Wilson* opinion suggests that, in states with dual limitations periods, the longer period for general personal injury actions should be selected rather than the shorter period usually allocated for certain named intentional torts. The generalized statutes are both more analogous to federal civil rights actions and more appropriate for those actions.

Maryland has a one-year statute of limitations that applies to actions for assault, battery, libel, and slander and a general three-year limitations period that applies to virtually all other personal injury actions. Of the two limitations periods, the three-year statute is most analogous to section 1983 actions because it covers the broad range of such actions. The three-year statute is also more appropriate than the one-year statute because the narrow scope and short limitations period of the one-year statute indicates a legislative disfavor that should not be carried over to federal civil rights actions. To be consistent with the guidelines set forth in *Wilson*, the United States District Court for the District of Maryland should adopt a three-year limitations period for all section 1983 claims and the Fourth Circuit should affirm.