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Prisoners' Rights Litigation- 42 U.S.C. §1983- Litigation: Plaintiff's View

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PRISONERS' RIGHTS LITIGATION—42 U.S.C. §1983

SECTION 1983 LITIGATION: PLAINTIFF'S VIEW

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During the years of the Warren Court, much social progress was achieved in this country through litigation. In the areas of civil liberties and civil rights this was chiefly done through affirmative law suits brought in federal court under the Civil Rights Act of 1870.[1] While this Act was not widely used in its first ninety years, its development in the last two decades has been remarkable. Suits under the Constitution and this Act have brought dramatic change in the fields of civil rights and civil liberties.[2]

While much criticism has been leveled at the judicial activism inherent in the foregoing socio-legal revolution, this use of the Civil Rights Act is little more than was contemplated in its inception. The seemingly revolutionary impact of the aforementioned litigation is apparent only because of its dynamic impact within the relatively short span of the last twenty years. Had it not been stifled for its first ninety years, it would have shown a more natural evolution. To understand the proper use of this Act and its importance, a brief understanding of its history and place in federal-state relations is necessary.

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1. 42 U.S.C. § 1981, *et seq.* (1970).

2. *See, e.g.*, O'Conner v. Donaldson, 422 U.S. 563 (1975) (right of mental patients), Wolff v. McDonnell, 418 U.S. 539 (1974) (prisoners' rights); Cohen v. Chesterfield County School Board, 414 U.S. 632 (1974) (teachers' rights); Tinker v. DeMoines School District, 393 U.S. 503 (1969) (students' rights); Pickering v. Board of Education, 391 U.S. 563 (1968) (teachers' rights); Brown v. Board of Education, 347 U.S. 483 (1954) (school desegregation); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971) (prisoners' rights); Kirstein v. Rector and Visitors of the University of Virginia, 309 F. Supp. 184 (E.D. Va. 1970) (women's rights).

The Act traces its genesis to the Civil Rights Act of 1866[3] which was enacted to preserve many of those rights established in the just concluded civil war. To further ensure these rights, the fourteenth amendment was ratified three years later. However, it quickly became apparent that individuals could not protect their own newly guaranteed rights under the fourteenth amendment. Accordingly, in 1870, the Congress passed the Ku Klux or Civil Rights Act,[4] which established a separate federal forum for those individuals who could not vindicate or protect their rights in the state courts during the post-civil war years. The logic seems inescapable that a federal forum protect federally created or federally protected rights. However, over the past 20 years, the possible conflict between federal and state judicial systems and the social impact of section 1983 litigation has caused suits under this Act to be procedurally complex.

In 1908, in *Ex parte Young,*[5] the Supreme Court allowed federal injunctions against state officers acting in official capacities. The reaction to that decision has been the legislatively and judicially made doctrine of comity which is intended to ameliorate the clash between federal and state courts.[6] Comity has grown into a major hurdle in section 1983 litigation where there is a potential state court remedy. This doctrine has been widely abused by federal court judges who seek to deny section 1983 litigants a federal forum by imposing such requirements as the exhaustion of state court remedies where the law requires no such exhaustion,[7] as it does in federal habeas corpus litigation.[8] This is particularly significant in the field of prisoners' rights litigation under section 1983 where jurisdiction is combined with requests for habeas corpus relief.[9]

Often section 1983 litigation requires direct attacks on state laws, regulations, rules, *et cetera.* To prevent federal-state conflict here,

3. Ch. 31, 14 Stat. 27 (1866) (current version at 18 U.S.C. § 241, *et seq.* (1970)).

4. 42 U.S.C. § 1981, *et seq.* (1970).

5. 209 U.S. 123 (1908).

6. *See, e.g.,* Douglas v. City of Jeannette, 319 U.S. 157 (1943); 28 U.S.C. §2283 (1970).

7. McNeese v. Board of Education, 373 U.S. 668 (1963). The Supreme Court rejected the Board of Education's contention that "a federal claim in a federal court must await an attempt to vindicate the same claim in a state court." *Id.* at 672.

8. 28 U.S.C. § 2254 (1970).

9. *See generally* Preiser v. Rodriguez, 411 U.S. 475 (1973). Respondents were denied relief under 42 U.S.C. § 1983 since habeas corpus was the appropriate relief. Therefore, they were required to first exhaust state remedies as required by federal law.

the Supreme Court delineated the doctrine of abstention, an outgrowth of the broad doctrine of comity.[10] This principally gave the state system the right to initially determine the application, scope and constitutionality of its own enactments prior to federal adjudication. State interpretation of a state statute under attack would affect the manner in which a statute is applied and thus in turn affect the existence of federal constitutional problems.

Section 1983 litigation also entails attacks upon matters associated with state court prosecutions. Here hurdles were set up to guard against federal-state conflict through federal legislation[11] and judicial doctrine.[12] In bringing suits under the Civil Rights Act, the attorney should seriously consider these questions of comity. Both jurisdictional claims and relief must be framed to meet jurisdictional claims of comity.

Further, relief must be tailored to meet "case and controversy" requirements and standing requirements.[13] Furthermore, section 1983 suits are frequently mooted out by concessions of facts, changes of rules, *et cetera,* by defendants.[14] By such mooting, principles of law are not decided in the case. Thus, battles are won but wars are lost in affirmative plaintiff litigation. To avoid this mooting by defendants' symbolic acts, damages are often claimed.

Here another major consideration which comes into play is unique to section 1983 litigation. Great care must be exercised to avoid eleventh amendment immunity claims of defendants.[15]

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10. *See, e.g.*, England v. Louisiana Medical Examiners, 375 U.S. 411 (1964), in which the Court discusses the abstention doctrine in detail.

11. 28 U.S.C. § 2283 (1970). The statute prohibits the federal courts from granting an injunction to stay proceedings in a state court.

12. Younger v. Harris, 401 U.S. 37 (1971) (where the Supreme Court refused to enjoin a state court proceeding without showing unusual circumstances that would call for equitable relief).

13. *See, e.g.*, Flast v. Cohen, 392 U.S. 83 (1968).

14. *E.g.*, Kirstein v. Rector and Visitors of the University of Virginia, 309 F. Supp. 184 (E.D. Va. 1970). A suit brought by four women to compel their admission to the University of Virginia was dismissed because the defendant had taken steps to implement a plan which would allow women to attend the University on an equal basis with men as soon as was reasonably feasible.

15. Edelman v. Jordan, 415 U.S. 651 (1974), *reh. denied,* 416 U.S. 1000 (1974). The eleventh amendment is a bar to any suit by private parties when the liability which they seek to impose must be paid from public funds in the state treasury. *Id.* at 663. However, the Court has allowed injunctive relief against the state as in *Ex parte* Young, 209 U.S. 123 (1908). *But*

Tied up in this consideration is the fact that defendants must act under "color of state law" according to the most commonly used section of the Civil Rights Act.[16] While the under "color of state law" requirement would seem to require suits against officials in their official capacities only, courts dismiss damages against officials under the eleventh amendment unless the suit is against them in their individual capacities. The matter has been further confused by several courts which have allowed certain types of relief against defendants in official capacities and certain other relief against defendants in individual capacities.[17]

It might seem that considering relief is the last element of a suit, but to the contrary, it is the prime decisional matter. In order to bring this type of action, with its unusually complex complaints and other initial pleadings, it is necessary that the objective be attained, *i.e.,* the prayer for relief must be clearly decided and then the pleadings designed to achieve that. The litigation should follow that pattern, never losing sight of the ultimate relief sought, which is usually more complex than in most other civil litigation where only money damages or rights in property are in essence.

Civil Rights Act litigation is further complicated by the prevalence and advantages of both plaintiff and defendant class actions. The advantages of class actions both as to class relief, damages and discovery are enormous. The disadvantages of class actions as to costs are equally great where normally impoverished plaintiffs are suing mostly institutionalized defendants. Costs are paramount considerations of strategy in civil rights litigation, not only governing class action requests, but also forum, choice of counsel, and

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see Keckeisen v. Independent School District, 509 F. 2d 1062 (8th Cir. 1975) which recognizes the immunity from civil suits granted to the states. However,

> individuals and associations acting under color of state law are not immune to the sanctions of the Civil Rights Act and may be sued, unless it is clear to the court that the claim is actually a ruse by which personal jurisdiction over the state is sought to be exercised.

Id. at 1064.

16. 42 U.S.C. § 1983 (1970).

17. Thomas v. Ward, 529 F. 2d 916 (4th Cir. 1975). The Court held that the members of the school board were persons within the meaning of § 1983 and that, sued in that capacity, they have no sovereign immunity. Also, the court granted the plaintiff back pay which would ultimately come from the state treasury. See note 15 *supra,* for a similar analysis but contrary results.

whether private party defendants are to be added to public official defendants. Cost considerations further materially affect the decision as to risking appeals on new approaches or unsettled legal questions.

Many prison cases are initially brought *pro se*. Where section 1983 claims are deficient, courts sometimes grant jurisdiction under the All Writs Act[18] or the Declaratory Judgment Act[19] or even as a habeas corpus petition. While such jurisdiction looks tempting to avoid some eleventh amendment and associated defenses, they usually only tempt appeals. A paramount role of most civil rights litigation where substantial questions are unique and complex is to avoid undue procedural pitfalls and defenses.

A further major consideration of civil rights litigation is the availability of counsel fees.[20] While the Nixon courts have seriously limited federal court jurisdiction in these types of suits, this new attorney's fees act should provide a new impetus for this type of litigation.

There are too many other considerations to fully set forth in an introductory article of this nature as to handling civil rights litigation. The foregoing discussion was set forth to acquaint the reader with the type of unique strategy considerations in this type of litigation and not the scope of it. Other questions of choice of judge, nature of jury panel, lack of adequate state class actions, difficult scope of federal versus state discovery, broader relief power of federal courts, choice of better appellate forums, choice of venue, availability of controlling law, and numerous other considerations go into the decisions of pursuing affirmative litigation under the Civil Rights Act and how to conduct it.

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18. 28 U.S.C. § 1651 (1970).

19. 28 U.S.C. § 2201 (1970).

20. The Civil Rights Attorney's Fees Awards Act of 1976, Pub. L. No. 94-559, 90 Stat. 2641 (amending 42 U.S.C. § 1988 (1970)).