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42 U.S. Code § 1983: Civil Rights Act of 1871

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INTRODUCTION

One of the primary functions of federal courts is to provide relief against governments or government officials for violations of the Constitution or laws of the United States. Congress has amended the United States Constitution or written statutes many times over the years in order to protect each and every citizen of the United States from undesirable actions taken by States, counties, towns, and government officials. 42 U.S.C § 1983, more commonly known as § 1983 is one of these statutes. §1983 is the basis for most all suits in federal courts against local governments or local officers to redress a violation of federal law.[1] § 1983 creates a cause of action against any person who, acting under color of state law, violates rights created by the Constitution and laws of the United States.

HISTORY

In the years following the Civil War, Congress adopted a number of Amendments to the Constitution that were meant to provide African Americans with the same rights and privileges as whites. The Thirteenth Amendment (1865) prohibited slavery or involuntary servitude. The Fourteenth Amendment (1868) provides citizens of a State equal protection of the laws and also requires States to afford each citizen due process of law. The Fifteenth Amendment (1870) gave African Americans the right to vote and Congress the power to pass any legislation necessary to enforce this right.

These Amendments, however, were not well received in all parts of the United States, especially in the South, where lawlessness and violence against blacks was commonplace, primarily due to the Ku Klux Klan. In 1871, Congress reviewed a 600 page Senate report detailing the inability or unwillingness of Southern States to control the activities of the Ku Klux Klan.[2] In response, Congress adopted the Civil Rights Act of 1871, section one of which is now embodied in § 1983.[3] Although § 1983 requires state action or involves state officials, it is well settled that state and local officials at this time were either members of the Ku Klux Klan or at the very least were so interconnected to the Klan that their conduct constituted state action. Many Southern states were aware of the KKK and their violence against minorities, yet failed to anything to stop their unconstitutional behavior.

As one can imagine, The Civil Rights Act of 1871 and more notably § 1983 substantially altered the relationship between the federal government and states. States had long been considered sovereign, independent, and ultimately in charge of protecting the rights of all citizens within its borders. This statute, however, altered states' power by empowering the federal government and the federal courts with the authority necessary to prevent and remedy violations of federal rights.[4]

In the earlier years, there was only sparing use of § 1983 to redress violations of federal rights. From the time it was enacted in 1871 until 1920, only twenty-one cases

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[1] ERWIN CHEMERINSKY, FEDERAL JURISDICTION § 8.1 (4th ed. 2003)
[2] *Id*. at § 8.2
[3] *Id*.
[4] *Id*.

were decided under § 1983.[5] § 1983 was used so infrequent early in the century that Justice Oliver Wendell Holmes remarked that he "assumed" that the statue had not been repealed by Congress. *See*, *Giles v. Harris*, 189 U.S. 475, 485 (1903).[6] In the first half of the twentieth century § 1983 litigation was still relatively rare and used primarily to invalidate state laws that prevented blacks from voting. Following the Civil Rights movement in the early 1960's, § 1983 litigation became more prevalent. In 1977, there were roughly 20,000 § 1983 suits; in 1985, over 36,000; and by 1995, the number was close to 60,000 suits per year.[7]

§ 1983 and the CONSTITUTION

§ 1983 gives a procedure that allows a person to bring a lawsuit claim based upon a right guaranteed by the federal government. That source of federal law is usually the United States Constitution. In some cases, it is a law passed by the federal government.

Most § 1983 claims are brought when an individual believes that his or her Constitutional rights were infringed upon by a state or local government employee. The most common rights complained of under § 1983 are:

4th Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

- Most people who argue that their 4th Amendment right was violated claim that the government did not have probable cause to search them or their property.
- In *Tennessee v. Garner*, 471 U.S. 1 (1985), a father whose unarmed son was fleeing from the burglary of an unoccupied house and shot to death by a police officer sued the police officer for a violation of his son's 4th Amendment rights. The Supreme Court held that the use of deadly force in this context is a "seizure" under the 4th Amendment.

8th Amendment: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

- Many individuals use § 1983 when they were treated in a way that is considered cruel and unusual punishment under the 8th Amendment, such as a prison guard beating a prisoner.
- In *Farmer v. Brennan*, 511 U.S. 825 (1994), prison officials placed a prisoner in a population where there was a high likelihood he would be injured even though there was evidence the prison officials knew or should have known the inmate would be assaulted.

14th Amendment: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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[5] *Id*.
[6] ERWIN CHEMERINSKY, FEDERAL JURISDICTION § 8.2
[7] *Id*.

- § 1983 protects individuals' 14th Amendment rights such as the guarantee that one is entitled to a fair process before the government can take away life, liberty or property from a person. Also, the 14th Amendment guarantees that laws are applied equally to all citizens.
- In *County of Sacramento v. Lewis,* 523 U.S. 833 (1998), the parents of a teenager killed during a high-speed police pursuit sued the sheriff's department and the officer involved in the chase. The parents alleged that the officer's actions deprived their son of his right to life.

15th Amendment: The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

- Individuals use § 1983 with the 15th Amendment when a government official discriminates or affects a person's ability to vote based on race.
- In Hawaii, citizens sued the state after the state allowed only voters of native Hawaiian ancestry to vote for members of the Office of Hawaiian Affairs. The Supreme Court held that this violated the 15th Amendment because it was race-based voting qualification.

§ 1983- WHAT DOES IT MEAN?

I. The Meaning of "Under Color of State Law"

As noted previously, § 1983 creates a cause of action against any person who, acting under color of state law, violates rights created by the Constitution and laws of the United States. The first main problem with the statute was defining the phrase "under color of state law". The first question that arose was whether § 1983 applied only to actions taken pursuant to official government policies or whether suit may be brought against the unauthorized or even illegal acts of government officers. Prior to 1961, there was a widespread belief that § 1983 only applied to misconduct that was officially authorized or so tolerated to amount to a custom.

In 1961, the Supreme Court of the United States of America, in *Monroe v Pape*, first considered the meaning of "under color of state law." In this case, Monroe alleged that 13 Chicago police officers broke into his home early in the morning, subjected his family to humiliation by making them stand naked in the living room, and searched every room in their home. Monroe was then taken to the police station and questioned for 10 hours, yet no charges were ever filed against him. The Supreme Court was forced to decide whether the Chicago police officers could be deemed to be acting "under color of state law" because their conduct was obviously not authorized by the city, nor was this type of conduct customary in Chicago law enforcement. The Court found that the officers were acting "under color of state law" even though they were not pursuing official state policy and in fact violating state law. The Court held that these officers misused power which they possessed by virtue of state law and that their conduct was

only made possible because they were clothed with the authority of state law, thus acting "under color of state law." [8]

II. Who is a "Person" for Purposes of § 1983 Liability?

The next major question the Court was forced to decide was who should be considered a person and thus subject to suit under § 1983. There are four possible ways to sue a government or government official and each will be discussed separately. The four categories are:

(1) Can you sue the State or state official in their official capacity? (i.e bring a suit against the State of Mississippi or governor in his official capacity for violation of federally protected rights);

(2) Can you sue a State official in his individual capacity? (i.e sue Gov. Haley Barbour personally, meaning you will seek compensation from his personal bank accounts);

(3) Can you sue a municipality or subdivision? (i.e bring suit against the City of Jackson, Jackson Police Department, Jackson City Council, etc.);

(4) Can you sue a municipal official in his or her individual capacity? (i.e. sue a particular city councilman, school board member, jailer at the county jail, mayor, etc. for violations of federally protected rights).

Another question the Court had to resolve is what defenses or immunities should be afforded to these persons.

A. States or State Officials in their Official Capacity as Defendants

The Eleventh Amendment to the United States Constitution states in relevant part: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another state, or by Citizens or Subjects of any foreign state." In English, this means that states are sovereign and cannot be sued in federal courts by their own citizens, citizens of another state, or by citizens of a foreign country. Additionally, states cannot be sued in their own state court unless they have specifically waived sovereign immunity. This is what is commonly known as "Eleventh Amendment Immunity".

The Eleventh Amendment balances the power of the state and federal governments to make sure that neither is dominant and that states are still independent. Because of the Eleventh Amendment a citizen cannot sue their state or a state agency (i.e. Department of Human Services) directly seeking monetary damages under § 1983.

[8] *Id*. at § 8.3.

There is, however, one way around this problem of Eleventh Amendment Immunity. The Supreme Court in *Ex Parte Young* found that the Eleventh Amendment did not prohibit a suit against state officers, in their official capacity, for prospective injunctive relief even when the injunction will affect official state policy. In ordinary English, this means that you may sue a state official to make sure that they stop the unconstitutional behavior in the future. In these situations, you cannot seek monetary damages or compensation for any violation. Because injunctive suits do not seek monetary damages, Eleventh Amendment immunity is not implicated to the same degree as it would in other situations. For example, if you felt that a Mississippi state law or official state policy was in violation of the Constitution, you could bring a suit against the Attorney General of the State of Mississippi (person responsible for enforcing state law) to enjoin or stop them from enforcing this state law or policy, even though you would be barred from seeking compensation due to the Eleventh Amendment.

B. State Officials in their Individual Capacity as Defendants

As noted previously, the Eleventh Amendment is concerned with protecting state treasuries and making sure that plaintiffs cannot go after state tax dollars in a § 1983 lawsuit. The Eleventh Amendment, however, does not prevent suits against state officers when the damages to be paid out will come from the officers' own pockets.[9] This is often described as a suit against an officer in his or her individual capacity. Additionally, any state indemnification agreements or policies are irrelevant.[10] For example, if a state offers or agrees to pay any judgment entered against the officer with state funds, the Eleventh Amendment is not implicated. This is because the state has voluntarily chosen to pay and thus do not need the protection of the Eleventh Amendment.

An interesting question arose as to how a suit against an officer in his official capacity versus one against the officer in his personal capacity could be distinguished. In *Hafer v. Melo*, the Supreme Court reaffirmed the distinction by stating that official capacity suits are an attempt to sue the government entity by naming the officer as a defendant. In *Hafer*, shortly after her election the State Auditor fired a number of public employees because of their Democratic affiliation. The plaintiffs brought a § 1983 suit against the State Auditor in her individual capacity seeking monetary damages. The defendant attempted to claim that the § 1983 suit was barred because she was acting in her official capacity and thus immune under the Eleventh Amendment. The Court found that "acting in their official capacities is best understood as a reference to the capacity in which they are sued, not the capacity in which the officer inflicts the alleged wrong."[11]

Although *Hafer* has not ended the confusion on this issue, the fact that the officer or official was acting in the scope of their official duties is not enough to bar a suit as being in "official capacity."[12]

C. Municipalities or Political Subdivisions as Defendants

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[9] *Id*. at § 7.5.2.
[10] *Id*.
[11] ERWIN CHEMERINSKY, FEDERAL JURISDICTION § 7.5 (citing *Hafer v. Melo*, 502 U.S. 21 (1991)).
[12] *Id*.

As noted previously, States are immune from a § 1983 suit because of the Eleventh Amendment and the idea of sovereign immunity. Because municipalities provide important basic government services (i.e. police, fire, education, and sanitation) there is substantial opportunity for these local governments to violate the Constitution or federal law.[13] In 1961 the *Monroe Court*, discussed previously, specifically found that "Congress did not undertake to bring municipalities within the scope of § 1983." [14] However, seventeen years later the Supreme Court came to a much different conclusion in its landmark decision, *Monell v. Department of Social Services*.

Monell involved a suit against the city of New York challenging a policy requiring pregnant teachers to take unpaid leave of absences. In *Monell*, the Supreme Court of the United States expressly overruled its earlier decision in Monroe and found that municipalities, such as New York, were subject to § 1983 liability. The Court held that legislative history of the Act indicated that "Congress did intend municipalities and other local government units to be included among those persons" subject to § 1983. However, the Court did limit its application of § 1983 and held that a "local government may not be sued under §1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may be said to represent official policy, the injury that the government is responsible under §1983."[15]

Monell however left many questions unanswered. Most notably, how is municipal policy or custom proven. A line of Supreme Court cases since *Monell* has narrowed the scope of "policy or custom". In recent years the Supreme Court has accepted four ways to establish the existence of a policy or custom sufficient to impose liability against a municipal government. First, actions taken by the municipal legislative body may constitute official policies. For example, a city council's firing of a government official without providing procedural due process in violation of the 5th and 14th Amendments would be deemed to be official policy. Likewise, a city council's cancellation of a rock concert in violation of the First Amendment could be sufficient to prove official policy or custom. A second way to establish liability is to show that the municipality has delegated decision-making authority to a municipal agency or board (i.e. school boards, etc.) The third way is to show that government policy or custom is made by those whose "edicts or acts may be said to represent official policy". Basically this means that someone with final decision-making authority made a deliberate choice to follow a certain course of action, thereby establishing his decision as final policy of the municipality. The fourth way to show policy or custom is to provide proof that there is a policy of inadequate training or supervision. In order to prove there was a policy of inadequate training or supervision, a plaintiff is required to show that this behavior amounts to deliberate indifference by local government. Deliberate indifference could be lack of instruction in the use of firearms or failure to remedy repeated complaints of constitutional violations by officers.

D. Municipal Officials in their Individual Capacity as Defendants

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[13] *Id*. at § 8.5.
[14] ERWIN CHEMERINSKY, FEDERAL JURISDICTION § 8.5 (citing *Monroe v. Pape*, 365 U.S. at 187).
[15] *Id*. (citing *Monell v. Department of Social Services*, 436 U.S. 658 (1978)).

Municipal officials such as the mayor, police chief, police officers, councilmen, and others may also be sued individually under §1983 for violation of federally protected rights. Much like suits against state officials in their individual capacity, when one sues a municipal official like the ones listed above they are seeking monetary damages from that persons individual pockets. The problem is that many of these municipal officials such as police officers, county or city jailer, and others are often not wealthy people and thus there is very little to gain even if the plaintiff prevails.

Additionally, state and municipal officials sued in their individual capacities are provided a defense to their action which is called "qualified immunity" or good faith immunity. In *Harlow v. Fitzgerald*, the Supreme Court stated that in order for a plaintiff to overcome a defendant's good faith or qualified immunity they must show that the official "violated a clearly established statutory or constitutional right of which a reasonable person would have known." Since this ruling, federal courts have struggled in determining what is and isn't a clearly established constitutional right that a reasonable person should know.

Interestingly, the Supreme Court has found that when a municipality is sued under § 1983 it is not entitled to the good faith immunity. In *Owen v. City of Independence*, the Court rejected the idea that lack of immunity for municipalities would have an adverse effect on government operations. The Court reasoned that allowing for municipal liability, without the benefit of a good faith defense, would create an incentive for local governments to prevent constitutional violations.[16]

E. Other Immunities- Absolute Immunity

The Supreme Court has held that individuals performing certain function have absolute immunity from liability under §1983. Judges have absolute immunity to suits for monetary damages for their judicial acts. Additionally, members of Congress and their aides have absolute immunity for actions taken within the legislative function under the "Speech and Debate Clause". This immunity has been extended to state and local legislators as well. Third, the prosecutorial function is accorded absolute immunity. This means that city and state prosecutors will not be subject to suit if they are acting within the prosecutorial function. Police officers who testify as witness are also granted absolute immunity for their testimony at trials. Fifth and finally, the President of the United States is clothed with absolute immunity to suits for monetary damages for acts done while carrying out his presidency.[17]

§ 1983- Prison Litigation and Limitations

According to the definition, prisoner is a person who has committed some type of wrong that is punishable by time spent in prison.[18] While in a prison, that person loses most of the rights that are afforded to everyday citizens of this country. The most

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[16] ERWIN CHEMERINSKY, FEDERAL JURISDICTION § 8.5 (discussing *Owen v. City of Independence*, 445 U.S 622 (1980)).
[17] *Id*. at § 8.6
[18] See Generally Nigel Walker, Why Punish? (1991), for a thorough discourse on the different goals, ideologies, and rationalization for state-instituted punishment.

obvious of which is the person's liberty and control over their day to day activities. Although prisoners give up most all their rights while they are incarcerated, not all rights are given up. Under the Eighth Amendment of the United States Constitution, prisoners are afforded the rights to a human's basic needs.[19] These rights include adequate ventilation, sanitation, and hygienic facilities.[20] The question becomes, how are the rights of prisoners protected while they are incarcerated?

Originally prisoners had no rights afforded to them in order to bring lawsuits.[21] It wasn't until the 1960s that a prisoner's right to sue was officially recognized.[22] Before this time, the courts took a hands off approach and deferred to the power of prison officials to run and oversee the nation's prison system.[23] The change in protection of prisoner's rights was brought about by the Supreme Court's change in judicial philosophy as well as the declining conditions of many prisons.[24] Once the Supreme Court allowed prisoners to protect their Eighth Amendment rights by bringing suit under 42 United States Code § 1983, the lawsuits came in droves.[25]

Prisoner's rights are protected by their ability to file 42 U.S.C. § 1983 lawsuits.[26] The typical lawsuit prisoners file concerns every aspect of prison life.[27] These suits could include everything from eating and sleeping to work and play.[28] The filing of such suits brings attention to possible acts of abuse or neglect by prison guards or officials.[29] When considering how terrible a place prison must be it is not hard to imagine that tens of thousands of suits were being filed each year.[30] In the year 2000, prisoners from both the federal and state systems filed roughly 58,257 petitions in the United States District Courts.[31] This overwhelming amount of lawsuits filed by state and federal prisoners allowed for much abuse of the system. Prisoners began filing what is referred to in legal terms as frivolous lawsuits or lawsuits that have no basis for being filed. Senator Bob Dole, while arguing that something had to be done, made reference to a case in which an inmate sued the state because he received a jar of crunchy peanut butter instead of the creamy kind he had requested.[32] In April of 1996, Congress enacted the Prison Litigation

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[19] See *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).
[20] *Id*.
[21] Howard B. Eisenberg, Rethinking Prisoner Civil Rights Cases and the Provision of Counsel, 17 S. Ill. U. L. J. 417, 422 (1993).
[22] William L. Selke, Prisons in Crisis 28 (1993).
[23] *Id*.
[24] See Generally, Eisenberg at note 4.
[25] *Id*.
[26] 42 U.S.C. § 1983 (1996).
[27] See generally Cindy Chen, The Prison Litigation Reform Act of 1995: Doing Away With More Than Just Crunchy Peanut Butter, 78 St. John's L. Rev. 203, 205 (2004).
[28] *Id*.
[29] *Id.*
[30] *Id.*
[31] See John Scalia, U.S. Dep't of Justice, Prison Petitions Filed in U.S. District Courts, 2000, with Trends 1980-2000 (2002), available at http://www.ojp.usdoj.gov/bjs/pub/pdf/ppfusd00.pdf.
[32] See 141 Cong. Rec. S14413 (daily ed. Sept. 27, 1995) (statement of Sen. Dole) (including the Peanut Butter Case among the list of frivolous prisoner-brought lawsuits that inundate the federal dockets and waste legal resources).

Reform Act in an effort to reduce the number of prisoners filing lawsuits that waste the United States Courts and Prison Officials time and money.[33]

The Prison Litigation Reform Act serves as a substantial limit on the ability of prisoners to file § 1983 suits in Federal Court.[34] Such limits include the requirement that prisoners pay a filing fee for the initiation of a lawsuit and the showing of "imminent danger of serious physical injury."[35] Even if the inmate has shown the imminent danger requirement the suit may be dismissed on account that the inmate has had three suits dismissed on account of being frivolous or similar reason.[36] Federal District Courts must review the complaints of inmates in efforts to dismiss those that are frivolous.[37] Furthermore the act bars suits for mental or emotional injury unless the inmate can show that these injuries are coupled with physical ones as well.[38] Finally, in order for an inmate to be able to get into federal court all other available administrative remedies must be attempted first.[39] This means that if a prison system has procedures for complaints or likewise, a prisoner must try all other means before going to Federal Court.

The Prison Litigation Reform Act has had its criticisms, most notably an unfair limitation on the access to courts to a group of persons that have no other means in which to remedy their problems.[40] Furthermore, statistics on the amount of lawsuits the Act has reduced have been argued to be unreflective of the increase in overall prison population.[41] Opponents of the act cite these and other criticisms in efforts to argue that the act is not the best way to remedy the problem of frivolous lawsuits filed by prisoners.[42] Whether a person is for or against the Act, it does serve to limit the ability of prisoners to file suit under § 1983 in federal courts.

FEDERAL COURT RELIEF AGAINST FEDERAL OFFICERS

No federal statute authorizes federal courts to hear suits or give relief against federal officers who violate the Constitution of the United States. Although § 1983 authorizes suits against state and local officers, it has no application to the federal government or its officers. Additionally, there is no similar statute to cover violations of federal law by federal officials. Prior to 1971, any person who had their constitutional rights violated by a federal officer could only seek injunctive relief. Injunctive relief only acted to make sure that these federal officers would stop or discontinue unconstitutional behavior.[43]

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[33] See Eugene J. Kuzinski, Note, The End of the Prison Law Firm?: Frivolous Inmate Litigation, Judicial Oversight, and the Prison Litigation Reform Act of 1995, 29 Rutgers L.J. 361, 368 (1998).
[34] ERWIN CHEMERINSKY, FEDERAL JURISDICTION § 8.1.
[35] *Id*.
[36] *Id*.
[37] *Id*.
[38] *Id*.
[39] See generally Cindy Chen, supra note 10.

[40] ERWIN CHEMERINSKY, FEDERAL JURISDICTION § 8.1.
[41] See generally Cindy Chen, supra note 10.
[42] *Id*.
[43] *Id*. at § 9.1

In 1971, however, in *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, the Supreme Court first allowed a plaintiff to seek monetary damages from individual federal officers of their alleged violations of the Fourth Amendment. In this case, Bivens was subjected to an illegal and humiliating search by agents of the Federal Bureau of Narcotics and sought monetary damages. The Supreme Court found that an individual whose rights have been violated should not be relegated to state tort law. The majority of the Court also found that a federal law cause of action could be inferred directly from the Fourth Amendment.[44]

Although the *Bivens* decision was a step forward, the Court limited its application a great deal. The Court noted and has consistently applied an exception widely known as "special factors counseling hesitation" or "alternative remedial schemes" to limit the application of *Bivens*. These phrases have been interpreted to mean that a *Bivens* suits is unavailable to a plaintiff if Congress has provided an alternative remedy through another federal law. This means that if there is another law with a comprehensive plan to right the wrong, a plaintiff will not be able to sue for monetary damages under *Bivens* and must use the plan that Congress has put in place.

It is important to note that *Bivens* suits are only allowed against a federal officer. The Supreme Court has consistently refused to permit *Bivens* type suits against federal agencies, state governments, or private entities.[45]

CONCLUSION

42 U.S.C § 1983 is a very important statute that gives citizens a way to enjoin or seek compensation when their constitutional rights have been violated by state or local officials. § 1983 suits can be filed whenever a state or local official violates a right secured by the Constitution, however most suits are filed in regards to violations of the 1st, 4th, 8th, 14th, or 15th amendments. The Prison Litigation Reform Act has, however, provided extreme limitations on a prisoners ability to file § 1983 suits. Additionally, *Bivens* suits have acted as a parallel to § 1983 suits when a federal official is in violation of a right secured by the Constitution.

Overall, § 1983 has achieved its intended purpose. The control of the Ku Klux Klan is no longer a threat even in the South. Furthermore, each citizen, no matter the state, is afforded the same rights under the United States Constitution and has the same ability to protect those rights through the use of 42 U.S.C. § 1983.

[44] *Id*. (discussing in detail *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971)).
[45] *Id*.

DISCUSSION

1. In the case *DeShaney v. Winnebago County Department of Social Services*, 498 U.S. 189 (1989), the mother of a child who had been severely beaten by his father unsuccessfully brought a Section 1983 case against social workers and county officials who knew the child was being abused by his father, but did not remove him from his father's custody.

A majority of the Supreme Court said that the mother could not recover damages from the county because in a case like this the government did not have a responsibility to protect one private citizen from another private citizen.

Other justices disagreed saying that under state law, the social services department was the sole agency that the mother could depend on to protect the well-being of her child and was responsible for the actions it did not take, such as moving the child to another home.

Which position do you agree with? Why?

2. If a police officer keeps a person from walking away from a scene, but does not arrest him, do you think this mean the person has been "seized" under the Fourth Amendment? If so, the officer may be subject to a Section 1983 claim if he retains the individual without probable cause.

- Generally, whenever an officer restrains the freedom to walk away, he has seized that person under the Fourth Amendment per *United States v. Brigoni-Price*, 422 U.S. 873 (1975).

3. Many government functions are now being turned over to private companies. For example, some prisons are staffed by guards who work for private prison management firms. Should these private individuals be protected by the defense of qualified immunity even though they are not government entities?

- The Supreme Court has answered "no" to this question. In *Richardson v. McKnight*, 512 U.S. 399 (1997), because there is no historical tradition for extending this defense to private parties. Also, the Court noted that since private companies are competing among each other for contracts, they have an incentive to avoid practices that may lead to constitutional violations in order to protect their positions.

4. Exercise:

- Imagine that a county sheriff hired his nephew's son, Kobe, as a deputy, but did not review his criminal record which included guilty pleas for assault and battery, resisting arrest and public drunkeness.

  After starting work, the Kobe pulled over Martha during a routine traffic stop and angrily yanked her from the car, causing serious and permanent damage to her knees.

- Assume that when the sheriff hires new deputies, he rarely conducts background checks on applicants. Also, assume that he does not closely supervise the deputies once they are hired.

- The Supreme Court has held that inadequacy of police training can serve as the basis of a §1983 suit when the failure to train amounts to "deliberate indifference" to the rights of people with whom the police come into contact. To prove deliberate indifference, it must be shown that either: (1) there was inadequate training in light of foreseeable consequences such as the use of a gun or high speed pursuits; or (2) the city failed to change its practices in response to repeated complaints of constitutional violations by its officers.

- Would the sheriff or county be liable for Kobe's actions? Would deliberate indifference be proven by the inadequate training standard above or by the failure to change practices standard?

5. Prisoners may sue prison officials under the Eighth Amendment for failing to protect the prisoners from other prisoners. Supreme Court Justice Clarence Thomas believes that since the injuries come directly from other prisoners and not the officials themselves that this does not fall under the government's obligation not to inflict cruel and unusual punishment. Thomas thinks that these lawsuits should not be based on the Eighth Amendment. Rather, he says that the injured prisoners should sue those who are directly responsible for the injuries, instead of the government.

Do you agree with Justice Thomas' position?

6. The purpose behind the Prison Litigation Reform Act was to reduce the number of frivolous lawsuits filed by prisoners.

(A) If a §1983 suit is the best way for prisoners to protect their constitutional rights, do you think it is a good idea to limit their access to such suits?

(B) One limit is under the Act is that the prisoner must show he is "imminent danger of serious physical injury." However, even if a prisoner can prove this, he may still be barred from filing a suit if he has had three suits dismissed on account of being frivolous.
If a prisoner files a suit, but has filed three previous suits that were frivolous, do you think it is fair to throw out his new suit even if he can prove he is in danger?

7. Which of the following officials and entities could be sued for monetary damages for constitutional violations:
   - Haley Barbour
     - A state official can be sued only in his individual

capacity for monetary damages. However, he can be sued for prospective injunctive relief.

- the state of Mississippi
  - Because of the Eleventh Amendment, a state cannot be sued for monetary damages for constitutional violations.

- an FBI agent
  - Under *Bivens*, individual federal officers may be sued for monetary damages for constitutional violations.

- the city of Jackson
  - A city can be sued for monetary damages for its official policies or customs which cause a constitutional violation.

8. Which type of immunity applies to each of the following acting in his official capacity:

•the county prosecutor?

•Absolute immunity.

•a police chief?

•Qualified or "good faith" immunity.

•the city of Gulfport?

•None.

•the President of the United States?

•Absolute immunity.