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THE SECTION 1983 DAMAGE ACTION: AN OVERVIEW

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INTRODUCTION**

This brief presentation provides a "Cook's Tour" of section 1983[1] and requires shifting mental gears away from zoning and taking law. It will deal with section 1983 damage actions. There is much, though, that cannot be covered, including section 1983 actions for injunctive relief,[2] so-called section 1983 "laws" actions,[3] and attorney's fees awards under 42 U.S.C. § 1988, the Civil Rights Attorney's Fees Awards Act of 1976.[4]

Section 1983 was enacted by the 42nd Congress in 1871. For the most part it remained dormant until 1961 when the Supreme Court decided *Monroe v. Pape*[5] which held, among other things, that "color of law" includes misuse of authority. Section 1983 is best understood as a federal statute which creates a fourteenth amendment action for damages. Its functions include the regulation of official conduct and the compensation of persons suffering constitutional deprivations. The Supreme Court has dramatically expanded the scope of liability under section 1983 and made it much more pro-plaintiff than anyone imagined it would be.[6] On the other hand, as will be seen, the Supreme

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1. 42 U.S.C. § 1983 (1976, Supp. III 1979) reads as follows:

> 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.

2. *See* CIVIL RIGHTS AND CIVIL LIBERTIES LITIGATION chapter 5.

3. *See id.* at § 2.10, discussing Maine v. Thiboutot, 448 U.S. 1 (1980); and Middlesex County Sewerage Authority v. National Sea Clammers Assn., 453 U.S. 1 (1981).

4. *See id.* at §§ 1.17-1.20.

5. 365 U.S. 167 (1961).

6. As, for example, by holding that local governments are suable persons under section 1983, Monell v. Dept. of Social Services, 436 U.S. 658 (1978), and are not protected by any kind of

Court has recently handed down several important pro-defendant decisions as well.[7] Three hypotheticals[8] will be used as a way of demonstrating the scope of section 1983 damage actions.

Hypothetical No. 1

Suppose that building inspectors are sued for damages in their individual capacities[9] *by property owners under section 1983 for violations of their fourth amendment rights occurring in connection with certain inspections and causing the plaintiffs harm. The suit is brought in federal court. What are the elements of the prima facie case under section 1983?*

Prima Facie Case

At the outset, the federal court in the hypothetical has subject matter jurisdiction pursuant to 28 U.S.C. § 1343(3),[10] the jurisdictional counterpart of section 1983. Also, the suit need not first be brought in state court. *Monroe v. Pape*[11] so held as a matter of section 1983 interpretation. In other words, there is no exhaustion of state *judicial* remedies required for a section 1983 plaintiff in federal court. Similarly, as the Supreme Court recently reaffirmed, there is no need for a section 1983 plaintiff to exhaust his or her state *administrative* remedies before filing in federal court.[12] If in our hypothetical there were some sort of city procedure whereby property owners could assert their grievances against building inspectors, it would still be irrelevant for exhaustion purposes with respect to section 1983 damage actions brought in federal court.

immunity from compensatory damages liability, Owen v. City of Independence, 445 U.S. 622 (1980).

7. As, for example, in Harlow v. Fitzgerald, 102 S. Ct. 2727 (1982), by removing the subjective part of the qualified immunity test.

8. The first and second are the more important for purposes of this presentation. The third deals briefly with the issue of local legislator immunity.

9. If they had been sued in their official capacities, the legal effect would be the equivalent of a suit against their governmental employer, a topic discussed in connection with Hypothetical No. 2.

10. This provision reads as follows:

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: . . .

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States . . .

(b) For purposes of this section—

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

11. 365 U.S. 167 (1961).

12. Patsy v. Florida Bd. of Regents, 457 U.S. 496 (1982).

The language of section 1983 refers to "[e]very person". The building inspectors in our hypothetical are suable persons, just as many state and local government officials acting under color of law are proper defendants under section 1983. However, some state and local government officials are protected by absolute immunity; this group includes state and regional legislators, judges, prosecutors[13] and probably local legislators as well.[14] In any event, our building inspectors are rather clearly defendants who are not protected by absolute immunity, but are instead protected by the affirmative defense of qualified immunity, discussed later.[15]

The next inquiry is whether the plaintiffs in the hypothetical have properly alleged a fourteenth amendment violation.[16] The fourteenth amendment applies to the states, while the various provisions of the Bill of Rights apply on their face only to the federal government. One travels from the alleged fourth amendment violations of these building inspectors to the fourteenth amendment and section 1983 through incorporation. The fourteenth amendment incorporates many of the provisions of the Bill of Rights, including specifically the fourth amendment in our hypothetical, and applies the fourth amendment to the states and local governments. The building inspectors are thereby governed by the fourth amendment, that is, they are required by the fourteenth amendment to comply with the provisions of the fourth amendment.

There is another aspect of incorporation which ties in to the language of the fourteenth amendment and section 1983. The fourteenth amendment only applies to state action. It does not ordinarily apply to individuals acting in a private capacity. In order to have a fourteenth amendment violation, the building inspectors must have acted in a way which can be attributable to the state. This is another way of putting the state action requirement.[17] In contrast, section 1983 speaks in terms

13. Tenney v. Brandhove, 341 U.S. 367 (1951) (state legislators); Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391 (1979) (regional legislators); Pierson v. Ray, 386 U.S. 547 (1967) (judges); Imbler v. Pachtman, 424 U.S. 409 (1976) (prosecutors). *See generally* CIVIL RIGHTS AND CIVIL LIBERTIES LITIGATION, chapter 7.

14. Discussed later in connection with Hypothetical No. 3.

15. *See* text at pages 44-47 *infra*.

16. The fourteenth amendment reads in relevant part as follows:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

17. On state action, *see* CIVIL RIGHTS AND CIVIL LIBERTIES LITIGATION at §§ 2.04-2.09.

of color of law, and *not* state action. It had been suggested that section 1983's color of law language might be narrower than the fourteenth amendment's state action requirement. However, the Supreme Court held in *Lugar v. Edmondson Oil Co.*[18] that where there is state action, there is also action under color of law. That is, whenever state action is present for purposes of the fourteenth amendment, the section 1983 color of law requirement is satisfied as well. Inasmuch as the building inspectors in our hypothetical allegedly violated the plaintiffs' fourth amendment rights in connection with their official conduct in inspecting buildings, there is no serious problem with either state action or color of law.

Another important *prima facie* case issue relates to what may be called the basis of liability or state of mind required for section 1983. The issue is simply put: What did the Court mean when it said in *Monroe v. Pape* that section 1983 is to be interpreted against a "background of tort liability?" Some federal courts suggested that section 1983 had its own independent state of mind requirement, with the question of whether ordinary negligence was actionable under section 1983 becoming a subject of considerable controversy. The Court twice in the last few years granted certiorari to deal with the issue[19] but avoided it until *Parratt v. Taylor*.[20] *Parratt*, an important case, involved a prisoner who sued prison officials for damages under section 1983 because they allegedly were negligent and lost hobby materials that the prisoner had ordered through the mail. The theory of liability was that defendants had deprived plaintiff of a property interest without due process of law.

Parratt implicated two related, but different, issues. The first was whether section 1983 has its own independent state of mind requirement. The Supreme Court finally ruled that section 1983 does *not* have its own state of mind requirement. Whatever the state of mind requirement is for the particular constitutional violation, that is the extent of the 1983 plaintiff's state of mind hurdle for the *prima facie* case.[21] For example, in order to show an equal protection violation in a racial discrimination setting, a plaintiff must prove purposeful discrimination.[22] Consequently, where a section 1983 plaintiff alleges an equal protection

18. 102 S. Ct. 2744 (1982).

19. In Baker v. McCollan, 443 U.S. 137 (1979) and Procunier v. Navarette, 434 U.S. 555 (1978).

20. 451 U.S. 527 (1981).

21. I emphasize this because, as will be seen, there is a state of mind requirement for the affirmative defense of qualified immunity.

22. Washington v. Davis, 426 U.S. 229 (1976).

violation and proves purposeful discrimination, that is enough to make out a *prima facie* case with respect to the state of mind requirement of the equal protection clause itself. There is no further need to worry about negligence, gross negligence, or recklessness with respect to section 1983. Supporting this result is the language of section 1983 itself, which on its face speaks only of causation; it says nothing about negligence or gross negligence.

The second issue in *Parratt* concerned the procedural due process merits. The Court reasoned as follows. First, there clearly was a property interest because the hobby materials were worth $23.50; *de minimus*, perhaps, during these inflationary times, but a property interest, nevertheless, especially for a prisoner. Second, there was a deprivation of that property interest: A property interest can be negligently deprived. However, the final procedural due process inquiry was in many respects the most important and the hardest: Was the appropriate process, the process which was due, given to plaintiff? The Supreme Court held that due process had been provided by the state because the plaintiff inmate had an adequate post-deprivation remedy: a cause of action under state law to recover the value of his lost property. Because the hobby materials were allegedly lost through the random acts of the defendants, no meaningful and workable pre-deprivation procedure could be set up by the state.

Consequently, *Parratt* held that a negligent deprivation of property does not violate procedural due process where there is an adequate post-deprivation remedy. However, Justices White and Blackmun emphasized in their concurring opinion that *Parratt* does not necessarily govern a situation where there is an *intentional* deprivation of property. Nor does *Parratt* govern where there is either a negligent or intentional deprivation of *liberty*. One can readily see that, depending on how broadly or narrowly it is read, *Parratt* may have real implications, going well beyond the scope of this presentation, for procedural due process, substantive due process and taking law.[23]

Following the constitutional violation, causation in fact is the next element of the *prima facie* case. For the building inspectors to be sued successfully for damages, the property owners must show that the

23. Examples in the circuits of broad readings of *Parratt* include: Rutledge v. Arizona Bd. of Regents, 660 F.2d 1345 (9th Cir. 1981), *aff'd on other grounds*, 103 S. Ct. 1483 (1983) (*Parratt* applies to deprivation of liberty); Johnson v. Miller, 680 F.2d 39 (7th Cir. 1982) (*Parratt* may apply to fourth amendment violation). *But see* Logan v. Zimmerman Brush Co., 455 U.S. 422, 435-36 (1982), holding that certain intentional deprivations of property by a state are not governed by *Parratt*.

building inspectors caused them some kind of harm. In this hypothetical there should be no serious problem with causation in fact; nor should there be any serious problem with that obscurantist tort concept called proximate cause. Proximate cause has confused federal courts in some section 1983 cases,[24] but not here.

As to damages, the Supreme Court held in *Carey v. Piphus*[25] that damages may not be presumed in section 1983 procedural due process cases. Even though *Carey* was limited to procedural due process, any plaintiff's lawyer seeking damages would be foolish not to allege and attempt to prove actual damages in every section 1983 case. Actual damages include emotional distress, pain and suffering and the like. Punitive damages are also available against individuals under section 1983 where recklessness or deliberate indifference is shown.[26] However, they are not available against local governments.[27]

Section 1983 does not have its own statute of limitations. Pursuant to 42 U.S.C. § 1988, federal courts must apply the forum state's analogous statute of limitations. Interestingly, the question of when a section 1983 cause of action accrues is an issue of *federal* law, but whether that section 1983 cause of action has tolled in a particular case is an issue of *state* law.[28]

Finally, there is no need on the part of the property owners, or any section 1983 plaintiff, to allege bad faith as part of the *prima facie* case. A plaintiff will allege bad faith in situations where he or she seeks punitive damages, but there is no need with respect to the *prima facie* case for compensatory damages to do so.[29]

The Affirmative Defense of Qualified Immunity

Suppose now that the plaintiffs' complaint survives a motion to dismiss and at trial the property owners make out a *prima facie* case against the building inspectors. Earlier, it was mentioned that the

24. *See, e.g.*, Duncan v. Nelson, 466 F.2d 939 (7th Cir.), *cert. denied*, 409 U.S. 894 (1972). *Cf.* Martinez v. California, 444 U.S. 277 (1980). The relationship between causation in fact and damages is more complex in procedural due process and first amendment cases than it is in Hypothetical No. 1. *See* Mount Healthy City School Dist. v. Doyle, 429 U.S. 274 (1977) and Carey v. Piphus, 435 U.S. 247 (1978). *See generally* CIVIL RIGHTS AND CIVIL LIBERTIES LITIGATION at §§ 3.14-3.15 on proximate cause and cause in fact.

25. 435 U.S. 247 (1978).

26. Smith v. Wade, 103 S. Ct. 1625 (1983).

27. City of Newport v. Fact Concerts, Inc., 435 U.S. 247 (1981).

28. Chardon v. Soto, 103 S. Ct. 2611 (1983); Delaware State College v. Ricks, 449 U.S. 250 (1980); Board of Regents v. Tomanio, 446 U.S. 478 (1980). *See* CIVIL RIGHTS AND CIVIL LIBERTIES LITIGATION, at § 4.13.

29. Gomez v. Toledo, 446 U.S. 635 (1980).

building inspectors are not absolutely immune defendants. Instead, they have the burdens of pleading and proving the affirmative defense of qualified immunity.[30] Qualified immunity is designed to reflect a balance between the interest in fourteenth amendment compliance and the interest in fearless decisionmaking by officials. Until recently, qualified immunity had two parts. There was, and still is, an objective part of the qualified immunity test, and there was, but no longer is, a subjective part of the qualified immunity test.

The objective part was put as follows: Did the defendant *reasonably* believe that he or she was acting constitutionally? The subjective part was at the time equally straightforward: Did the defendant *honestly* believe that he or she was acting constitutionally?[31] Both of these parts of the qualified immunity test saw considerable development since they were first set out. The subjective part was transformed into the following: Did the defendant maliciously intend to harm the plaintiff?[32]

The objective part became considerably more complex than it had been earlier. In the landmark decision of *Wood v. Strickland*,[33] the Supreme Court said a rather remarkable thing about qualified immunity: In certain circumstances, governmental defendants have a *duty to know settled, indisputable constitutional law.* If they do not act in a manner consistent with settled law, they fail the objective part of the qualified immunity test as a matter of law. Since the qualified immunity test at the time *Wood* was decided had two parts, each of which a defendant had to overcome in order to prevail, a defendant who failed the objective part automatically lost on the issue of liability for compensatory damages.

There remain, even now, very troublesome aspects of the objective part of the qualified immunity test as developed in *Wood*. What does "settled law" mean? Does one need a Supreme Court decision on point? A circuit court of appeals decision? A federal district court decision? What about a federal court from another circuit or district? All kinds of problems are raised by this aspect of *Wood*. "Settled law" gives a federal court considerable flexibility, if it is disposed to rule for the plaintiff, to find that there was, indeed, settled law in a particular case; such a federal court will freely extrapolate from existing law. In contrast, if a federal court is disposed to rule for the defendant, it will

30. *See* CIVIL RIGHTS AND CIVIL LIBERTIES LITIGATION, at § 8.13.
31. Scheuer v. Rhodes, 416 U.S. 232 (1974); Pierson v. Ray, 386 U.S. 547 (1967).
32. Wood v. Strickland, 420 U.S. 308 (1975).
33. *Id.*

find no case on point at the time the defendant acted. Therefore, that defendant would not have breached his or her duty to know settled law.

The two part qualified immunity test was in use until *Harlow v. Fitzgerald*,[34] decided in June of 1982. Fitzgerald, the plaintiff, who sued the President of the United States,[35] his aides and others because he allegedly lost his job as a result of "blowing the whistle" on the C5A transport cost overruns. He sued under a *Bivens*[36] theory of implying a cause of action directly under the Constitution. While the President was protected by absolute immunity,[37] his aides were found to be protected only by qualified immunity. But the aides went on to argue that the two part test should be changed. They noted that there were many situations where defendants showed through motions for summary judgment that they had in fact passed the objective part of the qualified immunity test as a matter of law. Nevertheless, in such cases, defense motions for summary judgment were regularly denied. These denials resulted from the use of the subjective part of the qualified immunity test which focused upon a defendant's actual state of mind. Federal courts were treating this state of mind issue as appropriate only for a jury on the ground that it was a factual issue in dispute, precluding summary judgment. Yet, in almost all of these cases, the argument went, the defendants would ultimately prevail on the subjective part after going through a full-blown trial, and would therefore win on the merits.

The Supreme Court agreed with the defendants that the subjective part should be eliminated. The Court observed that it had hoped when it set out the two part qualified immunity test for both *Bivens* actions and section 1983 actions that federal courts would readily be able to dismiss frivolous lawsuits. But this hope had not been realized. Consequently, the Court ruled, motions for summary judgment in appropriate cases may be granted by courts in favor of defendants based on the objective part alone.

Not only did the Court assert that defendants in these kinds of cases must be spared the costs, disruption and aggravation of a trial. The Court also insisted that there be no discovery until the plaintiff overcomes the qualified immunity test hurdle through summary judgment. Only when there is settled law violated by a defendant in a sec-

34. 102 S. Ct. 2727 (1982).

35. *See* Nixon v. Fitzgerald, 102 S. Ct. 2690 (1982), Harlow's companion case, holding that the President is absolutely immune from damage actions for his executive acts.

36. Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

37. *See* note 35, *supra*.

tion 1983 case will the plaintiff be allowed to obtain discovery. As a result, defense counsel will surely make use of *Harlow* in virtually every section 1983 case involving individual damages liability.

Hypothetical No. 2

Suppose now that the property owners sue the city employing the building inspectors for damages under section 1983 for the unconstitutional inspections of its building inspectors.

Local Government Liability

Initially, is the city a person? *Monroe v. Pape*[38] in its only pro-defendant aspect had held in 1961 that the City of Chicago and local governments in general were not persons. However, in *Monell v. Dept. of Social Services*[39] the Supreme Court said that it had made a mistake in *Monroe*: A city is indeed a person and may be sued under section 1983. States may not be proper section 1983 defendants, as it turns out, because they are protected by the eleventh amendment (for federal court purposes), and in any event are probably not persons within the meaning of section 1983.[40] But cities, counties and local government entities in general are suable persons.

However, respondeat superior cannot be used against a local government, or the city in the hypothetical, for section 1983 liability purposes. Just because the building inspectors are employed by the city, it does not follow that the city is liable for their unconstitutional conduct. According to *Monell*, there must instead be an actionable *official policy or custom* of the governmental body which, when implemented, causes the constitutional violation. The easiest cases involving official policy are those in which the governmental body itself acts formally, as, for example, by passing an ordinance.[41] Moreover, there are situations in which high-ranking city officials can, in effect, bind the governmental body; such officials are thought to speak for the governmental entity.[42]

More difficult issues arise respecting custom, and those can only be dealt with very briefly here. Suppose it turns out that the building inspectors regularly, frequently, repeatedly, and customarily violate the

38. 365 U.S. 167 (1961).

39. 436 U.S. 658 (1978).

40. Quern v. Jordan, 440 U.S. 332 (1979).

41. *Monell* itself clearly involved an official policy promulgated by the defendant regarding forced unpaid leaves of absence for pregnant employees.

42. There is local government liability "when [the] execution of a government's policy or custom, whether made by its lawmakers or *by those whose edicts or acts may fairly be said to represent official policy*, inflicts the injury." *Monell*, 436 U.S. at 694. (emphasis added).

fourth amendment when they make inspections. This, standing alone, is not enough to make the city liable. What is necessary in order to make the city liable is to attribute the inspectors' conduct to the city itself. This might be done as follows: Either high city officials knew in fact what the building inspectors were frequently and customarily doing or, to stretch a bit, they *should* have known. The latter is a kind of constructive notice approach to the use of custom as a basis of liability under section 1983.[43]

In my view, the official policy or custom must itself be unconstitutional. It is not enough that there is a *valid* official policy or custom which causes a constitutional deprivation. The Supreme Court has made this suggestion in *Polk County v. Dodson*,[44] a case dealing primarily with public defender liability, but which addressed this very issue.[45]

Once the plaintiffs make out a *prima facie* case against the city in our hypothetical, there is no affirmative defense.[46] The city might be liable even if, at the time the building inspectors acted, what they did was not considered to be unconstitutional. That is, there is local government liability even if a court holds after the fact that what the inspectors did earlier was unconstitutional. This should not be called strict liability, though, since an unconstitutional official policy or custom is still required for government liability. Thus, regardless of what the state of the law was at the time the challenged local government conduct occurred, if it turns out that a federal court later holds such conduct was unconstitutional, the local government may be liable.[47] Of course, the building inspectors as individuals would not be liable under these circumstances because they would in all likelihood pass the objective part of the qualified immunity test as a matter of law.

It should be mentioned that the foregoing relates to a city's liabil-

43. *See* cases collected in CIVIL RIGHTS AND CIVIL LIBERTIES LITIGATION at § 6.07.

44. 454 U.S. 312 (1981).

45. In this case the respondent failed to allege *any policy that arguably violated his rights* under the Sixth, Eighth, or Fourteenth Amendments . . . [A] *policy* of withdrawal from frivolous cases *would not violate the Constitution*. . . . [There was] *no impermissible policy* pursuant to which the withdrawals might have occurred. Respondent further asserted that he personally was deprived of a Sixth Amendment right to effective counsel. Again, however, he failed to allege that this deprivation was *caused by any constitutionally forbidden rule or procedure*.

454 U.S. at 326 (emphasis added). *See* Nahmod, *Constitutional Accountability in Section 1983 Litigation*, 68 IOWA L. REV. 24-29 (1982).

46. Owen v. City of Independence, 445 U.S. 622 (1980).

47. Defense lawyers in this situation ought to become familiar with the non-retroactivity doctrine of Chevron Oil Co. v. Huson, 404 U.S. 97 (1971). *See also* Aufiero v. Clarke, 639 F.2d 49 (1st Cir. 1981), *cert. denied*, 452 U.S. 917 (1981).

ity for compensatory damages. In *Newport v. Fact Concerts, Inc.*,[48] the Court held that local governments are not liable for punitive damages. In my view, the explanation for this decision is very simple: Enough is enough!

Hypothetical No. 3

Suppose that a city council and its members are sued for damages arising out of an ordinance setting out building inspection procedures which, when implemented by building inspectors, allegedly violated the fourth amendment rights of property owners.

Local Legislator Liability

It is clear with respect to the city, assuming there is a constitutional violation, that the city would be liable because the ordinance itself is formal action which surely constitutes an official policy. As to the city council members: Are local legislators absolutely immune defendants with respect to their legislative acts, or are they qualifiedly immune? Recall that state and regional legislators are absolutely immune from damages liability for their legislative acts.

The Supreme Court has increasingly moved from a status approach inquiry toward a functional approach to immunities which focuses on the nature of the challenged conduct. The Court applied such a functional approach to judges exercising legislative powers,[49] to regional legislators acting legislatively,[50] and to police officers—ordinarily protected by qualified immunity—accused of perjuring themselves as witnesses at criminal trials.[51] It did the same to federal administrative agency officials acting in a judicial or prosecutorial capacity in agency adjudicatory proceedings.[52] Consequently, when this issue finally reaches the Supreme Court, local legislators will probably be held to be protected by absolute legislative immunity for challenged legislative conduct. Indeed, this is the clear trend in the circuits.[53]

CONCLUSION

The intellectual richness, technical complexity and practical importance of section 1983 have only been hinted at here. Nevertheless it

48. 453 U.S. 247 (1981).
49. Supreme Court of Virginia v. Consumers Union, 446 U.S. 719 (1980).
50. Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391 (1979).
51. Briscoe v. LaHue, 103 S. Ct. 1108 (1983).
52. Butz v. Economou, 438 U.S. 478 (1978).
53. *See, e.g.*, Aitchison v. Raffiani, 708 F.2d 96, 98-99 (3d Cir. 1983).

should be apparent that lawyers and others involved in state and local government matters who do not become familiar with this significant, century-old federal civil rights statute are at risk. It should also be evident that the overriding theme of section 1983 is the centrality of the fourteenth amendment in our constitutional scheme.