Dealing with Contempt of Court and much more...

Dealing with Contempt of Court and much more...

Marcel offers this idea:

Judge just says "You're in contempt of court."

1. "Do/will you charge me with civil or criminal contempt?" Since I have no linkage to the court, such as a contractual relationship like bar membership or a judgment (probation or parole), the judge cannot answer criminal. If he says criminal, I demand the contract between me and the court. Normally, judge will answer civil.

2. "Do/will you charge me with direct or indirect contempt?" Judge now knows I have him and I won't let go, because he can only answer "indirect." Now, I spit the following at him like a machine gun, fast. I don't want his answer. I just want this on the record.

3. "Since you are a party to this action, who will adjudicate this instant action?"

4. "At adjudication, I demand my right to a trial by jury for this action."

5. "Please instruct the bailiff to obtain the name, address, and telephone numbers of everyone in this room that I may call these witnesses in my defense against your treasonous activities, including violation of your oath, in this room today."

6. "I have constitutionally secured liberties which I do not relinquish now or at any other time."

7. "You have constitutional limitations from which I do not release you now or at any other time."

8. "Unless you can in law show nature and cause as well as proper jurisdiction, then I shall hold you personally responsible and liable for any harm that comes to me as a direct or indirect consequence of your actions. Furthermore, I take exception to your command and I reserve my rights."

9. "I have now warned and given you notice." Pause to let the gravity of his situation sink into his mind. "Now what about that contempt charge?"

On Contemptuous behavior of judges and bailiffs:

I had a fun and productive conversation with Marcel Benshadler the other day. He told me to start reading the 5th Edition of Black's Law Dictionary that I just bought on-line. He said to find a word and read the definition till I reach the very first period, and then stop and re-read that definition repeatedly because that is the definition that counts. And he said to look up all other words in the sentence and read their definitions also, and annotate with cross references so I'll really know them. I figure that's sound advice from a man with an advanced

degree in Constitutional Law and many hours of courtroom drama under his belt.

We discussed the issue of judge high-handedly charging us with "contempt of court." Marcel gave me his formula for dealing with the contempt charge, and I published it on my mailing list here. During the discussion, Marcel mentioned that the judge in failing to abide by his oath, commits treason, and, "I challenged him to show me the law. He couldn't at the moment, and I told him I could not find treason of oath or anything like it in 18 U.S.C. "

A day or so later Marcel called me back to say that the Clinton Congress removed that crime (lucky for Bill) from the law books. However, he said that a number of Supreme Court cases mention treason by public officials, and he gave me a dialogue that might go like this in court if the judge accuses me of contempt for insisting on respect for my rights…

I ask the judge "Excuse me, are you an officer of the / this court?"

If he says "No", I say, "...wait, it now appears that you're impersonating a public officer, a violation of Texas statute 37.11."

If "Yes", I say, "That's great, then you're familiar with Owen v. Independence , right? There the Supremes / justices ruled that officers of the court have no immunity from liability when violating a constitutional right - for they are deemed to know the law. As I have come to learn, Judge, ignorance of the law applies to public officials, not to {We} the People. "

(According to Marcel, the first chapter of Oregon revised statutes indicates that ignorance of the law constitutes the perfect defense against willfulness for {us} the People, and almost all indictments claim someone "willfully" broke the law.)

"Now, Judge, it appears that you have no choice but to dismiss the case against me. You have violated my rights, badly injuring me, clearly showing prejudice against me, and you have made yourself subject to civil and criminal litigation as a result."

"Are you going to apply all the laws here today, or will you just apply arbitrary selections of the laws? Will you voluntarily and with specific intent do what the law forbids or fail to do what law requires, in other words, will you with ill will, bad purpose, disregard the law?"

"I have learned that in Cooper v. Arizona, 458 US 1 (1958), the court ruled that no legislator, executive, **or judicial officer** can war against the constitution without violating their undertaking (oath) to support it."

The judge might say he does not like me citing old cases because they were done under common law, and since 1933 bankruptcy courts operate under special statutory jurisdiction. In that instance cite U.S. v. Will 449 US 200 (1980) which quotes Cohens v. Virginia, 6 U.S. 264 Wheat. (1821) which ruled that whenever a judge acts when he or she does not have jurisdiction to act, the judge is engaged in an act or acts of treason. (See text below).

Point to the bailiff and tell the judge "Judge, call that bailiff to make record of the identity all the people in the court here today so I can call them as witnesses to your outrageously treasonous actions in this court today."

Marcel went on to say that if a bailiff or judge orders me out of a courtroom or the courthouse, I should say,

"Excuse me, this is an order, right? Are you unfamiliar with Miranda v. Arizona??? A competent court officer should readily know that when it comes to constitutionally secured liberties, there can be no rule making or

legislation which would abrogate them. I am aware that I have the right to peacefully assemble, and petition for redress of grievances. No rule or administrative order can trump that right. Have you prepared yourself to be hauled before the court for violating my civil rights under 42 U.S.C. §1983 or charged with your fellow bailiffs here with Seditious Conspiracy under 18 U.S.C. §2384?"

Now, I hope all of you will carefully read through the following information which I provide for educational purposes. When we face courts, we should always do so with observers on our behalf, armed with instant affidavit forms such as the attached, and ready to have them filled in and notarized, and entered into the case records as evidence. These can form the basis of the criminal complaints we may swear out against the perps posing as officers of the court.

Bob Hurt

"Where rights secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them." Miranda v. Arizona , 384 U.S. 436, 491 (1968)

Read - Study - Learn

18 U.S.C. § 2384. Seditious conspiracy.

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia .

42 U.S.C. § 1985. Conspiracy to interfere with civil rights

(1) **Preventing officer from performing duties**

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) **Obstructing justice; intimidating party, witness, or juror**

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) **Depriving persons of rights or privileges**

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects orrefuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

The Bill of Rights was provided as a barrier, to protect the individual against arbitrary exactions of ... legislatures, (and) courts ... it is the primary distinction between democratic and totalitarian way. **Re Stoller, Supreme Court of Florida, en banc**, 36 So.2d 443, 445 (1948).

Ignorance of the Law Is NO EXCUSE for Government Officials

Harlow v. Fitzgerald, 457 U.S. 800 at 818 (1982).

The Supreme Court emphasized that a reasonably competent public official should know the law governing his conduct and ruled that victims can hold almost all public administrators personally liable for conduct that violates clearly established ... “constitutional rights of which a reasonable person would have known".

In respondent's civil damages action in Federal District Court based on his alleged unlawful discharge from employment in the Department of the Air Force, petitioners, White House aides to former President Nixon, were codefendants with him and were claimed to have participated in the same alleged conspiracy to violate respondent's constitutional and statutory rights as was involved in Nixon v. Fitzgerald, ante, p. 731. After extensive pretrial discovery, the District Court denied the motions of petitioners and the former President for summary judgment, holding, inter alia, that petitioners were not entitled to absolute immunity from suit. Independently of the former President, petitioners appealed the denial of their immunity defense, but the Court of Appeals dismissed the appeal.*Held:*

1. Government officials whose special functions or constitutional status requires complete protection from suits for damages - including certain officials of the Executive Branch, such as prosecutors and similar officials, see **Butz v. Economou**, 438 U.S. 478 , and the President, Nixon v. Fitzgerald, ante, p. 731 - are entitled to the defense of absolute immunity. However, executive officials in general are usually entitled to only qualified or good-faith immunity. The recognition of a qualified immunity defense for high executives reflects an attempt to balance competing values: not only the importance of a damages remedy to protect the rights of citizens, but also the need to protect officials who are required to exercise discretion and the related public interest in encouraging the vigorous exercise of official authority. **Scheuer v. Rhodes**, 416 U.S. 232 . Federal officials seeking absolute immunity from personal liability for unconstitutional conduct must bear the burden of showing that public policy requires an exemption of that scope. Pp. 806-808.

2. Public policy does not require a blanket recognition of absolute immunity for Presidential aides. Cf. Butz, supra. Pp. 808-813.

(a) The rationale of **Gravel v. United States**, 408 U.S. 606 - which held the Speech and Debate Clause derivately applicable to the "legislative acts" of a Senator's aide that would have been privileged if performed by the Senator himself - does not mandate "derivative" [457 U.S. 800, 801] absolute immunity for the President's chief aides. Under the "functional" approach to immunity law, immunity protection extends no further than its justification warrants. Pp. 809-811.

(b) While absolute immunity might be justified for aides entrusted with discretionary authority in such sensitive areas as national security or foreign policy, a "special functions" rationale does not warrant a blanket recognition of absolute immunity for all Presidential aides in the performance of all their duties. To establish entitlement to absolute immunity, a Presidential aide first must show that the responsibilities of his office embraced a function so sensitive as to require a total shield from liability. He then must demonstrate that he was discharging the protected function when performing the act for which liability is asserted. Under the record in this case, neither petitioner has made the requisite showing for absolute immunity. However, the possibility that petitioners, on remand, can satisfy the proper standards is not foreclosed. Pp. 811-813.

3. Petitioners are entitled to application of the qualified immunity standard that permits the defeat of insubstantial claims without resort to trial. Pp. 813-820.

(a) The previously recognized "subjective" aspect of qualified or "good faith" immunity - whereby such immunity is not available if the official asserting the defense "took the action with the malicious intention to cause a deprivation of constitutional rights or other injury," **Wood v. Strickland**, 420 U.S. 308, 322 - frequently has proved incompatible with the principle that insubstantial claims should not proceed to trial. Henceforth, government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate "clearly established" statutory or constitutional rights of which a

reasonable person would have known. Pp. 815-819.

(b) The case is remanded for the District Court's reconsideration of the question whether respondent's pretrial showings were insufficient to withstand petitioners' motion for summary judgment. Pp. 819-820.

Government Officials Have No Immunity for Civil Rights Violations

Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978) – The Supreme Court, reversing its **Monroe v. Pape**, 365 U.S. 167 (1961) ruling, declared that local governmental bodies have no sovereign immunity from civil litigation initiated by the injured party, according to Civil Rights Act of 1871 (42 U.S.C. §1983).

Petitioners, female employees of the Department of Social Services and the Board of Education of the city of New York, brought this class action against the Department and its Commissioner, the Board and its Chancellor, and the city of New York and its Mayor under 42 U.S.C. §1983, which provides that every "person" who, under color of any statute, ordinance, regulation, custom, or usage of any State subjects, or "causes to be subjected," any person to the deprivation of any federally protected rights, privileges, or immunities shall be civilly liable to the injured party. In each case, the individual defendants were sued solely in their official capacities. The gravamen of the complaint was that the Board and the Department had as a matter of official policy compelled pregnant employees to take unpaid leaves of absence before such leaves were required for medical reasons. The District Court found that petitioner's constitutional rights had been violated, but held that petitioners' claims for injunctive relief were mooted by a supervening change in the official maternity leave policy. That court further held that Monroe v. Pape, 365 U.S. 167 , barred recovery of backpay from the Department, the Board, and the city. In addition, to avoid circumvention of the immunity conferred by Monroe , the District Court held that natural persons sued in their official capacities as officers of a local government also enjoy the immunity conferred on local governments by that decision. The Court of Appeals affirmed on a similar theory. Held:

1. In Monroe v. Pape, supra, after examining the legislative history of the Civil Rights Act of 1871, now codified as 42 U.S.C. 1983, and particularly the rejection of the so-called Sherman amendment, the Court held that Congress in 1871 doubted its constitutional authority to impose civil liability on municipalities and therefore could not have intended to include municipal bodies within the class of "persons" subject to the Act. Re-examination of this legislative history compels the conclusion that Congress in 1871 would not have thought 1983 constitutionally infirm if it applied to local governments. In addition, that history confirms that local governments were intended to be included [436 U.S. 658, 659] among the "persons" to which 1983 applies. Accordingly, Monroe v. Pape is overruled insofar as it holds that local governments are wholly immune from suit under 1983. Pp. 664-689.

2. Local governing bodies (and local officials sued in their official capacities) can, therefore, be sued directly under 1983 for monetary, declaratory, and injunctive relief in those situations where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by those whose edicts or acts may fairly be said to represent official policy. In addition, local governments, like every other 1983 "person," may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such custom has not received formal approval through the government's official decision-making channels. Pp. 690-691.

3. On the other hand, the language and legislative history of 1983 compel the conclusion that Congress did not intend a local government to be held liable solely because it employs a tortfeasor - in other words, a local government cannot be held liable under 1983 on a respondeat superior theory. Pp. 691-695.

4. Considerations of stare decisis do not counsel against overruling Monroe v. Pape insofar as it is inconsistent

with this opinion. Pp. 695-701.

(a) Monroe v. Pape departed from prior practice insofar as it completely immunized municipalities from suit under 1983. Moreover, since the reasoning of Monroe does not allow a distinction to be drawn between municipalities and school boards, this Court's many cases holding school boards liable in 1983 actions are inconsistent with Monroe , especially as the principle of that case was extended to suits for injunctive relief in City of Kenosha v. Bruno, 412 U.S. 507 . Pp. 695-696.

(b) Similarly, extending absolute immunity to school boards would be inconsistent with several instances in which Congress has refused to immunize school boards from federal jurisdiction under 1983. Pp. 696-699.

(c) In addition, municipalities cannot have arranged their affairs on an assumption that they can violate constitutional rights for an indefinite period; accordingly, municipalities have no reliance interest that would support an absolute immunity. Pp. 699-700.

(d) Finally, it appears beyond doubt from the legislative history of the Civil Rights Act of 1871 that Monroe misapprehended the meaning of the Act. Were 1983 unconstitutional as to local governments, it would have been equally unconstitutional as to state or local, officers [436 U.S. 658, 660] yet the 1871 Congress clearly intended 1983 to apply to such officers and all agreed that such officers could constitutionally be subjected to liability under 1983. The Act also unquestionably was intended to provide a remedy, to be broadly construed, against all forms of official violation of federally protected rights. Therefore, without a clear statement in the legislative history, which is not present, there is no justification for excluding municipalities from the "persons" covered by 1983. Pp. 700-701.

5. Local governments sued under 1983 cannot be entitled to an absolute immunity, lest today's decision "be drained of meaning," Scheuer v. Rhodes, 416 U.S. 232, 248 . P. 701.

Owen v. City of Independence, 445 US 622 (1980) - Municipalities have responsibility for constitutional and federal statutory violations, and the injured has the right to recover attorney’s fees from the defendant government.

After the City Council of respondent city moved that reports of an investigation of the city police department be released to the news media and turned over to the prosecutor for presentation to the grand jury and that the City Manager take appropriate action against the persons involved in the wrongful activities brought out in the investigative reports, the City Manager discharged petitioner from his position as Chief of Police. No reason was given for the dismissal and petitioner received only a written notice stating that the dismissal was made pursuant to a specified provision of the city charter. Subsequently, petitioner brought suit in Federal District Court under 42 U.S.C. §1983 against the city, the respondent City Manager, and the respondent members of the City Council in their official capacities, alleging that he was discharged without notice of reasons and without a hearing in violation of his constitutional rights to procedural and substantive due process, and seeking declaratory and injunctive relief. The District Court, after a bench trial, entered judgment for respondents. The Court of Appeals ultimately affirmed, holding that although the city had violated petitioner's rights under the Fourteenth Amendment, nevertheless all the respondents, including the city, were entitled to qualified immunity from liability based on the good faith of the city officials involved.

Held:

A municipality has no immunity from liability under 1983 flowing from its constitutional violations and may not assert the good faith of its officers as a defense to such liability. Pp. 635-658.

(a) By its terms, 1983 "creates a species of tort liability that on its face admits of no immunities." **Imbler v. Pachtman**, 424 U.S. 409, 417 . Its language is absolute and unqualified, and no mention is made of any

privileges, immunities, or defenses that may be asserted. Rather, the statute imposes liability upon "every person" (held in **Monell v. New York City Dept. of Social Services**, 436 U.S. 658 , to encompass municipal corporations) who, under color of state law or custom, "subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." And this expansive sweep of 1983's language is confirmed by its legislative history. Pp. 635-636. [445 U.S. 622, 623]

(b) Where an immunity was well established at common law and where its rationale was compatible with the purposes of 1983, the statute has been construed to incorporate that immunity. But there is no tradition of immunity for municipal corporations, and neither history nor policy supports a construction of 1983 that would justify the qualified immunity accorded respondent city by the Court of Appeals. Pp. 637-644.

(c) The application and rationale underlying both the doctrine whereby a municipality was held immune from tort liability with respect to its "governmental" functions but not for its "proprietary" functions, and the doctrine whereby a municipality was immunized for its "discretionary" or "legislative" activities but not for those which were "ministerial" in nature, demonstrate that neither of these common-law doctrines could have been intended to limit a municipality's liability under 1983. The principle of sovereign immunity from which a municipality's immunity for "governmental" functions derives cannot serve as the basis for the qualified privilege respondent city claims under 1983, since sovereign immunity insulates a municipality from unconsented suits altogether, the presence or absence of good faith being irrelevant, and since the municipality's "governmental" immunity is abrogated by the sovereign's enactment of a statute such as 1983 making it amenable to suit. And the doctrine granting a municipality immunity for "discretionary" functions, which doctrine merely prevented courts from substituting their own judgment on matters within the lawful discretion of the municipality, cannot serve as the foundation for a good-faith immunity under 1983, since a municipality has no "discretion" to violate the Federal Constitution. Pp. 644-650.

(d) Rejection of a construction of 1983 that would accord municipalities a qualified immunity for their good-faith constitutional violations is compelled both by the purpose of 1983 to provide protection to those persons wronged by the abuse of governmental authority and to deter future constitutional violations, and by considerations of public policy. In view of the qualified immunity enjoyed by most government officials, many victims of municipal malfeasance would be left remediless if the city were also allowed to assert a good-faith defense. The concerns that justified decisions conferring qualified immunities on various government officials - the injustice, particularly in the absence of bad faith, of subjecting the official to liability, and the danger that the threat of such liability would deter the official's willingness to execute his office effectively - are less compelling, if not wholly inapplicable, when the liability of the municipal entity is at issue. Pp. 650-656.

Government Cannot Violate Civil Rights Under color of Law

Maine v. Thiboutot, 448 U.S. 1 (1980)

Respondents, Lionel and Joline Thiboutot, are married and have eight children, three of whom are Lionel's by a previous marriage. The Maine Department of Human Services notified Lionel that, in computing the Aid to Families with Dependent Children (AFDC) benefits to which he was entitled for the three children exclusively his, it would no longer make allowance for the money spent to support the other five children, even though Lionel is legally obligated to support them. Respondents, challenging the State's interpretation of 42 U.S.C. 602 (a) (7), exhausted their state administrative remedies and then sought judicial review of the administrative action in the State Superior Court. By amended complaint, respondents also claimed relief under 1983 for themselves and others similarly situated. The Superior Court's judgment enjoined petitioners from enforcing the challenged rule and ordered them to adopt new regulations, to notify class members of the new regulations, and to pay the correct amounts retroactively to respondents and prospectively to eligible class members. 2 The court, however, denied respondents' motion for attorney's fees. The Supreme Judicial Court of Maine, 405 A. 2d

230 (1979), concluded that respondents [448 U.S. 1, 4] had no entitlement to attorney's fees under state law, but were eligible for attorney's fees pursuant to the Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641, 42 U.S.C. §1988. 3 We granted certiorari. 444 U.S. 1042(1980). We affirm.

Held:

1. Title 42 U.S.C. 1983 - which provides that anyone who, under color of state statute, regulation, or custom deprives another of any rights, privileges, or immunities "secured by the Constitution and laws" shall be liable to the injured party - encompasses claims based on purely statutory violations of federal law, such as respondents' state-court claim that petitioners had deprived them of welfare benefits to which they were entitled under the federal Social Security Act. Given that Congress attached no modifiers to the phrase "and laws," the plain language of the statute embraces respondents' claim, and even were the language ambiguous this Court's earlier decisions, including cases involving Social Security Act claims, explicitly or implicitly suggest that the 1983 remedy broadly encompasses violations of federal statutory as well as constitutional law. Cf., e.g., **Rosado v. Wyman**, 397 U.S. 397 ; **Edelman v. Jordan**, 415 U.S. 651 ; **Monell v. New York City Dept. of Social Services**, 436 U.S. 658 . Pp. 4-8.

2. In view of its plain language and legislative history, the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988 - which provides that attorney's fees may be awarded to the prevailing party (other than the United States) in "any action . . . to enforce" a provision of 1983, inter alia, and which makes no exception for statutory 1983 actions - authorizes the award of attorney's fees in such actions. [448 U.S. 1, 2] Moreover, it follows from the legislative history and from the Supremacy Clause that the fee provision is part of the 1983 remedy whether the action is brought in a federal court or, as was the instant action, in a state court. Pp. 8-11.

The Government Must Provide Equal Protection of the Law

Yo Wick v. Hopkins, 118 U.S. 356 (1886)

In the present cases, we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration; for the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the state itself, with a mind so unequal and oppressive as to amount to a practical denial by the state of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the fourteenth amendment to the constitution of the United States. Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal [118 U.S. 356, 374] hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution. This principle of interpretation has been sanctioned by this court in **Henderson v. Mayor of New York**, 92 U.S. 259 ; **Chy Luny v. Freeman**, 92 U.S. 275 ; **Ex parte Virginia**, 100 U.S. 339 ; **Neal v. Delaware**, 103 U.S. 370 ; and **Soon Hing v. Crowley**, 113 U.S. 703 ; S. C. 5 Sup. Ct. Rep. 730.

The present cases, as shown by the facts disclosed in the record, are within this class. It appears that both petitioners have complied with every requisite deemed by the law, or by the public officers charged with its administration, necessary for the protection of neighboring property from fire, or as a precaution against injury to the public health. No reason whatever, except the will of the supervisors, is assigned why they should not be permitted to carry on, in the accustomed manner, their harmless and useful occupation, on which they depend for a livelihood; and while this consent of the supervisors is withheld from them, and from 200 others who have also petitioned, all of whom happen to be Chinese subjects, 80 others, not Chinese subjects, are permitted to

carry on the same business under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which, in the eye of the law, is not justified. The discrimination is therefore illegal, and the public administration which enforces it is a denial of the equal protection of the laws, and a violation of the fourteenth amendment of the constitution. The imprisonment of the petitioners is therefore illegal, and they must be discharged. To this end the judgment of the supreme court of California in the Case of Yick Wo, and that of the circuit court of the United States for the district of California in the Case of Wo Lee, are severally reversed, and the cases remanded, each to the proper court, with directions to discharge the petitioners from custody and imprisonment.

U.S. v. Will 449 US 200 (1980) - *Held:*

2. Title 28 U.S.C. 455 - which requires a federal judge to disqualify himself in any proceeding in which his impartiality might reasonably be questioned or where he has a financial interest in the subject matter in controversy or is a party to the proceeding - by reason of the Rule of [449 U.S. 200, 201] Necessity does not operate to disqualify all federal judges, including the Justices of this Court, from deciding the issues presented by these cases. Where, under the circumstances of these cases, all Article III judges have an interest in the outcome so that it was not possible to assign a substitute district judge or for the Chief Justice to remit the appeal, as he is authorized to do by statute, to a division of the Court of Appeals with judges who are not subject to the disqualification provisions of 455, the common-law Rule of Necessity, under which a judge, even though he has an interest in the case, has a duty to hear and decide the case if it cannot otherwise be heard, prevails over the disqualification standards of 455. Far from promoting 455's purpose of reaching disqualification of an individual judge when there is another to whom the case may be assigned, failure to apply the Rule of Necessity in these cases would have a contrary effect by denying some litigants their right to a forum. And the public might be denied resolution of the crucial matter involved if first the District Judge and now all the Justices of this Court were to ignore the mandate of the Rule of Necessity and decline to answer the questions presented. Pp. 211-217.

[Footnote 19] In another, not unrelated context, Chief Justice Marshall's exposition in Cohens v. Virginia , 6 Wheat. 264 (1821), could well have been the explanation of the Rule of Necessity; he wrote that a court "must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by, because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid; but we cannot avoid them." Id. , at 404.

“It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid; but we cannot avoid them. All we can do is, to exercise our best judgment, and conscientiously to perform our duty.” ***Cohens v. Virginia***, 19 U.S. 264 (6 Wheat), 404, 5 L.Ed 257 (1821)

“As we held in **Aetna life Ins. Co. v. Lavoie**, 475 U.S. 813 (1986), this concern has constitutional dimensions. In that case we wrote: "We conclude that Justice Embry's participation in this case violated appellant's due process rights as explicated in Tumey, Murchison, and Ward. We make clear that we are not required to decide whether in fact Justice Embry was influenced, but only whether sitting on the case then before the Supreme Court of Alabama "'would offer a possible temptation to the average [judge] . . . [to] lead him not to hold the balance nice, clear and true.'" The Due Process Clause 'may sometimes bar trial by judges who have no actual

bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way, "justice must satisfy the appearance of justice."'" Id. , at 825

"One meaning of 'impartiality' in the judicial context -- and of course its root meaning -- is the lack of bias for or against either party to the proceeding. Impartiality in this sense assures equal application of the law. That is, it guarantees a party that the judge who hears his case will apply the law to him in the same way he applies it to any other party. This is the traditional sense in which the term is used. See **Webster's New International Dictionary 1247** (2d ed. 1950) (defining "impartial" as "[n]ot partial; esp., not favoring one more than another; treating all alike; unbiased; equitable; fair; just"). It is also the sense in which it is used in the cases cited by respondents and amici for the proposition that an impartial judge is essential to due process. **Tumey v. Ohio,** 273 U. S. 510, 523, 531-534 (1927) (judge violated due process by sitting in a case in which it would be in his financial interest to find against one of the parties); **Aetna Life Ins. Co. v. Lavoie**, 475 U. S. 813, 822-825 (1986) (same); **Ward v. Monroeville**, 409 U. S. 57, 58-62 (1972)." **Republican Party of Minnesota v. White**, 122 S.Ct. 2528, 153 L.Ed.2d 694 (U.S. 06/27/2002)

Whenever a judge acts where he/she does not have jurisdiction to act, the judge is engaged in an act or acts of treason. *U.S. v. Will*, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980); *Cohens v. Virginia*, 19 U.S. 264 (6 Wheat), 404, 5 L.Ed 257 (1821)

If a judge does not fully comply with the Constitution, then his orders are void, *In re Sawyer*, 124 U.S. 200 (1888), he/she is without jurisdiction, and he/she has engaged in an act or acts of treason.

"Without having been directly authorized, tacitly encouraged, or even inadequately trained, police officers, *like other public employees*, may fall into patterns of unconstitutional conduct. This can result from a variety of factors not sufficiently traceable in origin to any fault of "municipal policy" in the Monell sense (Monell v Dept. of Social Services (1978) 436 US 658, and Soell v McDaniel (1987 CA4 NC) 824 F.2d 1380). If these unconstitutional practices become sufficiently widespread, however, they may assume the quality of "custom or usage" which has the force of law…" **13 Am Jru Proof of Facts 3d, 21**

"Take the case of a local officer who persists in enforcing a type of ordinance which the Court has held invalid as violative of the guarantees of free speech or freedom of worship. Or a local official continues to select juries in manner which flies in the teeth of decisions of the Court. If those acts are done willfully, how can the officer possibly claim that he had no fair warning that his acts were prohibited by the statute? He violates the statute not merely because he has a bad purpose but because he acts in defiance of announced rules of law. He who defies a [325 U.S. 91, 105] decision interpreting the Constitution knows precisely what he is doing. If sane, he hardly may be heard to say that he knew not what he did. Of course, willful conduct cannot make definite that which is undefined. But willful violators of constitutional requirements, which have been defined, certainly are in no position to say that they had no adequate advance notice that they would be visited with punishment. When they act willfully in the sense in which we use the word, they act in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite. When they are convicted for so acting, they are not punished for violating an unknowable something." **Screws v US** 325 U.S. 91 (1945).

"But the power of detaining the person so arrested, or restraining him of his liberty, in such a case is not a matter within the discretion of the officer making the arrest. He cannot legally hold the person arrested in custody for a longer period of time than is reasonably necessary under all of the circumstances of the case, to obtain a proper warrant or order for his further detention from some tribunal or officer authorized under the law to issue such a warrant or order. If the person arrested is detained or held by the officer for a longer period of time than is required, under the circumstances without such warrant authority, he will have a cause of action for false imprisonment against the officer and all others by whom he has been unlawfully detained or held."

"But the general rule was stated in **Ellis v. US**, 206 U.S. 246, 257, as follows: 'If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those

circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent.' And see **Horning v. District of Columbia**, 254 U.S. 135, 137; **Nash v. United States**, 229 U.S. 373, 377."**Harris v Steele, 64 NE 875**

"To afford protection to the officer or person making the arrest, the authority must be strictly pursued; and no unreasonable delay in procuring a proper warrant for the prisoner's detention can be excused or tolerated. Any other rule would leave the power open to great abuse and oppression.

"That the arrest having been made without a warrant, it was necessary that the proper steps should be taken to prevent the further detention of the prisoner from becoming unlawful, for unless those steps were taken, all legal protection for such arrest ceased, and the arresting officers became wrongdoers from the beginning, liable, as such, equally with those by whom the unlawful imprisonment was continued; that if the arresting officers chose to relay on some other person to perform that required duty, they took upon themselves the risk of it being performed, and unless it was done in a proper time, their liability to the person imprisoned was not lessened or affected;…" **Leger v Warren 57 NE 506**

"Citizens may not be compelled to forgo their constitutional rights because officials fear public hostility or desire to save money. **Buchanan v. Warley**, 245 U.S. 60 (1917);**Cooper v. Aaron**, 358 U.S. 1 (1958); **Watson v. City of Memphis** , 373 U.S. 526 (1963)." **PALMER ET AL. v. THOMPSON**. 403 U.S. 217, 91 S. Ct. 1940, 29 L.Ed. 2d 438

For Further Study:

Belligerent Claimant

☐ Belligerent Claimant (different)

☐ Court Speak

Notes on PERSON

Lawful Arrest, Search, Seizure, FAQ

See also, ☐ Competent Counsel Questionaire

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US CODE: Title 15, 1127 Construction and definitions

F.Y.I.: Believe it or not, everybody's case is pretty much the same.
The "System" (b)leeds you to believe you are some kind of "special case."
The absurd accusations they have brought against you are NOT a "mistake."
It is a SCAM to keep you dizzy with and in fear.
Its NOT about "misunderstanding" you -- THEY ARE DOING IT DELIBERATELY!
Remember: Its their 'system' - not yours.

FOLKLORE? A man who, appeared on a criminal charge. The judge asked him if his name was "John Doe"
He replied; "My mother told me that was my name."
This statement then cannot be used to certify the identity of the defendant, as it is hearsay.
The judge looked at him a little funny, and asked, "How do you plead?"
To which the man replied,
"Judge, I'm ready to plead but first I want to know who is going to certify the charges to the court?"
That is all he said, and after the judge haggled with the clueless prosecutor a while, he cut him loose. Probably because they could not certify his identity, as he declined to testify as to his identity.

Consider being a Belligerent Claimant!

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