

GOVERNMENT LIABILITY IN CONSTITUTIONAL LITIGATION

T, 1:30-3:20 (ROOM 501)

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Office Hours: Wednesday, 3-5

SYLLABUS AND COURSE INFORMATION

Course Overview

Allowing citizen-plaintiffs to sue the government when it abuses its authority has become an essential method of enforcing the Constitution and laws of the United States. This course will focus on the law of Section 1983, the primary vehicle citizens may use to vindicate their constitutional rights against state and local government officials and municipalities, and the line of cases, beginning with *Bivens*, which allow for lawsuits alleging the commission of constitutional torts by federal employees.

Topics include the liability of government officials and municipalities, state sovereign immunity, individual immunity defenses, damages, and attorney's fees. In addition, the course will provide a specific analysis of how these cases actually are handled and of the important issues and strategies that civil rights attorneys must confront.

Among the questions the cases and readings will examine include: What are the doctrinal obstacles plaintiffs must overcome in order to establish liability against individual government officials or entities? What remedies are available to successful plaintiffs? How successful is the United States civil rights regime in deterring governmental misconduct and compensating injured citizen-plaintiffs?

Course Materials

Required:

JOHN C. JEFFRIES, et al. CIVIL RIGHTS ACTIONS: ENFORCING THE CONSTITUTION
(Foundation Press 2007)

Course Requirements and Grading

The primary component of your grade is your performance on the final examination, a 24 hour take-home, anonymously graded exam. As an alternative to the exam, you may write a paper that will fulfill your upper-level writing requirement. Please speak to me if you are considering the paper option.

Please note that attendance for this class is very important and will be recorded. If you are unable to attend class, please make arrangements with a classmate to obtain notes, new assignments, announcements, etc.

During class discussion, volunteers are always welcomed and encouraged. I will also call on students at random during each class meeting. Because this is a seminar, your participation is essential, and excellent participation will raise your grade.

Class Communications

For announcements, I will post updates on a Blackboard course page for this seminar. On occasion, I will also use Blackboard's email list function. Please make sure the email you listed with your Blackboard registration is current, and that you regularly check email at that address.

Reading Assignments

Week 1 - Introduction to the Course

Week 2 - The Structure of Section 1983 and Civil Rights Litigation

Reading: JEFFRIES, Appendix A (U.S. Constitution) & B (federal civil rights statutes); pp. 32-52; 60-74

- Questions:* (1) To what extent do these civil rights statutes serve different purposes?
- (2) What are the elements of a § 1983 claim?
- (3) When would a public official's actions not be considered under "color of law"? For example, could an official's actions be considered under "color of law" even when those actions are unauthorized or illegal?
- (4) What is the significance of *Monroe v. Pape*?
- (5) What is the distinctive role of a *Bivens* action?

Week 3 - The Eleventh Amendment

Reading: JEFFRIES, pp. 1-32; 52-60

- Questions:* (1) Is *Hans v. Louisiana* consistent with the text of the 11th Amendment? Is it consistent with the history underlying its origins?
- (2) How does the Court attempt to reconcile *Ex Parte Young* with the remainder of its 11th Amendment jurisprudence? (Refer also to the opinions in *Edelman v. Jordan*.)
- (3) What are some potential strategies plaintiffs might pursue, if they wish to avoid the obstacles posed by the Court's sovereign immunity doctrine? Why did the Court reject the "abrogation" argument for Section 1983?
- (4) What is the practical effect of the Court's ruling in *Hafer v. Melo* that state officials acting "in their individual capacities" are "persons" under Section 1983?

Week 4 - Absolute Immunity

Reading: JEFFRIES, pp. 74-105

- Questions:* (1) What are the justifications mentioned in *Bogan v. Scott-Harris* for offering legislators absolute immunity?
- (2) What is the rationale given in *Stump v. Sparkman* for extending absolute immunity to judges? Is the same rationale applied to prosecutors in *Imbler v. Pachtman*?
- (3) Are there any limits to these immunities?
- (4) How are these doctrines applied to federal officials?
- (5) What are the costs and benefits of the Court's absolute immunity doctrine?

Weeks 5 & 6 - Qualified Immunity

Reading: JEFFRIES, pp. 105-173

- Questions:* (1) What is the rationale given in *Scheuer v. Rhodes* for extending qualified immunity to individual officials?
- (2) Why did the Court eventually settle on an "objective" test for qualified immunity?
- (3) How do courts determine whether any given constitutional right is "clearly established"?
- (4) How and when should a claim of qualified immunity be resolved when there are disputed factual allegations?
- (5) How does the qualified immunity doctrine impose significant burdens on plaintiffs seeking to sue individual officials?

Week 7 - Establishing Governmental Liability – Policy or Custom

Reading: JEFFRIES, pp. 173-219

- Questions:* (1) What rationale did the Court offer in *Monell* for overturning its previous holding in *Monroe* and concluding that municipalities were "persons" within the meaning of § 1983?

(2) Why did the Court, in *Owen v. City of Independence*, reject a qualified immunities defense for municipalities?

Week 8 - Establishing Governmental Liability – Final Policymaker, Failure to Train

Reading: JEFFRIES, pp. 219-257

Questions: (1) How does a plaintiff show that a “policy or custom” existed at the time of the alleged constitutional violation? How does the plaintiff identify whether a particular government official or employee has sufficient policymaking authority? (Review *City of St. Louis v. Praprotnik*.)

(2) Under what circumstances might a “failure to train” theory be sufficient to establish liability? (Review *City of Canton v. Harris, Board of County Commissioners of Bryan County v. Brown*, and notes.)

Weeks 9 & 10 - Substantive Rights Enforced

Reading: JEFFRIES, pp. 257-316

Questions: (1) In what ways has the Court manipulated the doctrines concerning the substantive scope of constitutional rights in part out of a concern about the impact on damage remedies? (Review *Paul v. Davis* and accompanying notes.)

(2) What role does a defendant’s state of mind play in deciding liability questions? (See, especially, *Zinerman v. Burch*.)

Week 11 - Structural Reform Litigation and Injunctive Relief

Reading: JEFFRIES, pp. 848-897; 920-931

Questions: (1) How does “structural reform litigation” pose different challenges, compared to ordinary civil litigation?

(2) Given the Court’s opinions in *Missouri v. Jenkins* and *Spallone v. United States*, what kinds of injunctions would be permissible to desegregate public schools?

Week 12 - Prisoners' Rights Actions

Reading: JEFFRIES, pp. 932-975

- Questions:* (1) How has the PLRA changed the ways plaintiffs may obtain prospective relief?
- (2) How has the PLRA changed the enforcement of judicial decrees?
- (3) After *Lewis v. Casey*, what remains of an inmate's right of access to the courts?

Week 13 - Damages for Constitutional Injuries

Reading: JEFFRIES, pp. 343-385

- Questions:* (1) By what method do courts determine the amount of damages to redress constitutional injuries?
- (2) When are punitive damages available in § 1983 cases? What is the rationale for limiting punitive damages to only certain categories of defendants?

Week 14 - Settlement Negotiations, Attorneys' Fees

Reading: JEFFRIES, pp. 386-430; 442-473

- Questions:* (1) When would attorney's fees awards be unavailable to a § 1983 plaintiff?
- (2) How might *Buckhannon* affect the litigation strategies and settlement negotiations of civil rights plaintiffs?