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Duty to Provide Equal Protection: Police Officer's Liability for Non-Feasance Under Section 1983 of the Federal Civil Rights Act

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RECENT DECISIONS

DUTY TO PROVIDE EQUAL PROTECTION: POLICE OFFICERS' LIABILITY FOR NON-FEASANCE UNDER SECTION 1983 OF THE FEDERAL CIVIL RIGHTS ACTS

In *Huey v. Barloga*[1] the northern district court of Illinois recently interpreted section 1983[2] of the federal civil rights act[3] as providing a federal remedy[4] through a civil action sounding in tort against state or local officers whose negligent failure to preserve law and order has resulted in any citizen or class of citizens being denied the right to equal protection of the laws guaranteed under the fourteenth amendment.[5] In so interpreting section 1983, the decision has raised significant questions as to the scope of the section, the necessity of pleading an intentional action by the defendant public officer when an equal protection action is brought under the section, and the existence of a satisfactory standard for determining if a cause of action under the section has been stated.

Huey and New Applications of 1983

The Negro plaintiff in *Huey* brought an action under sections

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1. 277 F. Supp. 864 (N.D. Ill. 1967).

2. 42 U.S.C. § 1983 (1964):

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizens 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.

3. Shapo, *Constitutional Tort: Monroe v. Pape, and the Frontiers Beyond*, 60 NW. U.L. REV. 277, 279 (1965) is an excellent source for a background of the Civil Rights Act with particular emphasis on section 1983.

4. "The general rule in absence of statutory enactment seems to be that officers of a municipal corporation are not individually liable for the improper exercise of discretionary powers." Browne v. Bentonville, 94 Ark. 80, 12 S.W. 93 (1910). See also Manwaring v. Geisler, 191 Ky. 532, 230 S.W. 918 (1921); Askay v. Maloney, 85 Ore. 333, 166 P. 29 (1919); Growbarger v. U.S. Fidelity and G. Co., 126 Ky. 118, 102 S.W. 873 (1907). Also, see generally Annot., 18 A.L.R. 197 (1922).

There is authority, however, that officers may be liable for wilful and malicious exercise of powers rested in them, or a gross neglect of duty. Templeton v. Beard, 159 N.C. 63, 74 S.E. 735 (1912); Longstreet v. Mecosta County, 228 Mich. 542, 200 N.W. 248 (1924).

5. U.S. Const. amend. XIV, §1:

> . . . 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 laws.

1985[6] and 1986[7] of the Civil Rights Act against the trustees, employees, and agents of Cicero, Illinois, seeking damages for the death of his son.[8] While walking on a sidewalk in Cicero, the son had been severely beaten by a group of white youths and died four days later. In asserting his claim the plaintiff attempted to show a civil conspiracy by the defendants, based upon the decedent's race, to deprive his son of the "right to peaceably travel the streets of Cicero with the same freedom as is secured to white persons,"[9] a right which allegedly could have been secured through reasonable diligence by the defendants. The district court granted a motion to dismiss the actions under both sections for failure to state a specific act or omission in dereliction of duty proximately causing the injury. Looking to other possible theories upon which relief could be granted, however, the court examined the sufficiency of the complaint in stating a cause of action under section 1983.

Section 1983 provides for the civil liability of any person who, under color of state law, deprives another of his constitutional rights.[10] In discussing the applicability of the section the court relied heavily upon the broad language used by the Supreme Court in *Monroe v. Pape*.[11] In that case the Supreme Court, speaking through Justice Douglas, had said that "section 1983 should be read against the background of tort liability that makes a man responsible for the natural consequences of his acts."[12] The emphasis on "natural consequences" effectively eliminated the requirement for pleading a specific or purposeful intent to discriminate or deprive one of a constitutional right whenever "facts constituting deprivation . . . of a right guaranteed by the fourteenth amendment are alleged" in an action under section 1983.[13] However, the complaint

6. 42 U.S.C. § 1985 (1964).

7. 42 U.S.C. § 1986 (1964).

8. Sections 1985 and 1986 of the Civil Rights Act strike out against *conspiracies* to deprive persons of their constitutional rights, privileges, or immunities.

9. 277 F. Supp. at 868.

10. See the language of section 1983 at note 2 *supra*.

11. 365 U.S. 167 (1961). The complaint in *Monroe* involved the invasion by policemen of the Monroe home without a warrant and the subsequent search and detention of Mr. Monroe without warrant or arraignment. These acts of the defendant police officers were found to be a violation of the substantive guarantees against unreasonable searches and seizures in the fourth amendment, which are now applicable to the states through the due process clause of the fourteenth amendment. 365 U.S. at 171.

12. Prior to *Monroe* most courts had required an intentional deprivation of a fourteenth amendment right in both due process and equal protection actions for recovery under section 1983. See, *e.g.*, cases cited in Klittgard, *The Civil Rights Act and Mr. Monroe*, 49 CALIF. L. REV. 145 (1961), for lower courts holding intent necessary for all such actions brought under section 1983.

13. 365 U.S. at 171. Following the authority of the Supreme Court in *Monroe*, lower courts have applied the elimination of the intent requirement to a variety of cases: United States v. Social Service Dept., 263 F. Supp. 971 (E.D. Pa. 1967) allows "redress in a federal court for the tortious deprivation by any state official . . . of a right

under section 1983 was deemed insufficient for failure to "allege any specific acts or omissions by defendants, any causal connection between such acts or omissions and the deprivations suffered by *Huey*, or that the alleged acts or omissions were unreasonable in light of the circumstances."[14]

Omission to Act

While cases prior to *Huey* arising under section 1983 have involved a positive act by public officers,[15] *Huey* appears to be the first case which would allow recovery for a failure to act without specific notice of the danger.[16] Starting from the point that the invasion of constitutional rights need not be intentional but may be merely negligent, the district court analyzed the complaint in terms of ordinary tort liability and the traditional tort concept of "omission of duty" to determine if the dece-

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secured by the fourteenth amendment." Roberts v. Pepersack, 256 F. Supp. 415 (D. Md. 1966) declares that "*Monroe* affords recovery to citizens injured by the negligent and irresponsible conduct as well as the wilful actions of state officers." Pierson v. Ray, 352 F.2d 213, 218 (5th Cir. 1965) states that under section 1983, "a cause of action may be asserted against a state police officer . . . for deprivation of a fourteenth amendment Constitutional right whether or not done wilfully." For additional cases accepting the "natural consequences" test in *Monroe*, see: Dewitt v. Pail, 366 F.2d 682 (9th Cir. 1966); Basista v. Weir, 340 F.2d 74, 81 (3d Cir. 1965); Goldman v. Olson, 286 F. Supp. 35 (W.D. Wis. 1968); and Alburn v. Carey, 283 F. Supp. 3, 5 (E.D.N.Y. 1968).

14. 277 F. Supp. at 873. Several states have previously enacted "immunity" statutes to shield public officers from the threat of liability incurred in the performance of their duties. Such statutes reflect the feeling that

> public officers should be free to exercise their respective duties without fear of troublesome and vexatious litigation which would, in effect, deter and hinder smooth and efficient governmental operations. In addition, it provides an easy solution to the problem as to whether the individual citizen's constitutional rights should receive protection as opposed to the 'protection of the public's interest by shielding responsible governmental officers against harrassment and inequitable hazards of vindictive or ill founded suits.'

Note, 12 HOWARD L.J. 285, 296 (1966); see also Norton v. McShane, 332 F.2d 855 (5th Cir. 1964).

Section 1983 as a federal statute, however, has been interpreted to override this type of state immunity statute leaving police officers subject to the same dangers under federal statute. Pierson v. Ray, 386 U.S. 547 (1967). See also Klittgard, *supra*, note 12 at 162.

15. See, *e.g.* DeWitt v. Pail, 366 F.2d 682, 684 (9th Cir. 1966); Pierson v. Ray, 352 F.2d 213 (5th Cir. 1965); Basista v. Weir, 340 F.2d 74, 77 (3d Cir. 1965), alleging that the defendant police officers struck the plaintiff on the head without provocation, arrested him without a warrant and denied him medical aid and bail; Roberts v. Pepersack, 256 F. Supp. 415, 419 (D. Md. 1966) prisoner alleging that "he was forced to go naked and lie on a concrete floor without mattress or blankets . . . in a temperature of about forty degrees"; Roberts v. Trapnell, 213 F. Supp. 49, 50 (E.D. Pa. 1962) alleging that minor plaintiff had been shot by township police officer without just cause, kicked by officer and refused permission to telephone parents. See also Cohen v. Norris, 300 F.2d 24, 26 (9th Cir. 1962); and Selico v. Jackson, 201 F. Supp. 475, 476 (S.D. Colo. 1962).

16. The plaintiff in *Huey* sought to hold the police officer defendants liable for having "wrongfully neglected to prevent or aid in preventing the commission of wrongs against Jerome Huey. . . ." 277 F. Supp. at 868.

dent's constitutional right to equal protection had been denied.[17] The court explictly found that an affirmative duty exists on the part of policemen and other public officers to preserve law and order and to provide for the equal protection of all persons in the community; that failure by the police or city to perform effectively this function would be a negligent omission of duty and a denial of equal protection, and concluded that "an unreasonable omission of this nature would be actionable under Section 1983."[18] Thus, *Huey* carries the ambit of section 1983 one step further in suggesting that non-action as well as action may lead to civil liability under that provision.

Equal Protection and Intent

Although the nature of the complaint in *Monroe* was clearly that of a deprivation of due process,[19] the Court's language did not specifically restrict the elimination of the intent requirement to complaints arising under that clause of the fourteenth amendment.[20] Cases subsequent to *Monroe* have either professed to eliminate completely the necessity of pleading intent under section 1983[21] or distinguished complaints which allege a deprivation of the right to equal protection from those alleging a denial of due process and have restricted the elimination of the requirement of pleading intent to the latter.[22] The basis for such a limitation is the Supreme Court decision in *Snowden v. Hughes*,[23] in which the

17. 277 F. Supp. at 872-73.

18. *Id.*

19. 365 U.S. at 169.

20. While the complaint in *Monroe* was framed in terms of a denial of due process and equal protection the Court discussed the complaint and placed its decision only under the due process clause and did not consider whether the equal protection clause had also been satisfied. 365 U.S. at 171. Klittgard, *supra* note 12, at 146, discusses the significance of the Court's failure in *Monroe* to consider the equal protection issue.

21. For cases purporting to eliminate intent in all cases arising under section 1983, see DeWitt v. Pail, 366 F.2d 682 (9th Cir. 1966); Pierson v. Ray, 352 F.2d 213 (5th Cir. 1965); Basista v. Weir, 340 F.2d 74 (3d Cir. 1965); Hornsby v. Allen, 326 F.2d 605 (5th Cir. 1964); Stringer v. Dilger, 313 F.2d 536 (10th Cir. 1963); Goldman v. Olson, 286 F. Supp. 35 (W.D. Wis. 1968); Album v. Carey, 283 F. Supp. 3, 5 (E.D.N.Y. 1968); United States v. Social Service Dept., 263 F. Supp. 971 (E.D. Pa. 1967); Roberts v. Pepersack, 256 F. Supp. 415 (D. Md. 1966); Roberts v. Trapnell, 213 F. Supp. 49 (E.D. Pa. 1962). The facts of all such cases, however, are limited to due process allegations; thus the language of the courts is mere dicta as to the elimination of intent as a requirement for equal protection arising under section 1983.

22. Cohen v. Norris, 300 F.2d 24 (9th Cir. 1962), involved a due process complaint in which the court distinguished between due process and equal protection actions arising under section 1983. The court in *Cohen* explicitly recognizes the continuing validity of the intent requirement in Snowden v. Hughes for equal protection complaints brought under section 1983. In Selico v. Jackson 201 F. Supp. 475 (S.D. Cal. 1962), and Zanders v. Louisiana State Bd. of Educ., 281 F. Supp. 747, 762 (W.D. La. 1968), the courts distinguish equal protection cases under section 1983 from due process complaints thereunder and maintain intent as a requirement for equal protection cases only.

23. 321 U.S. 1 (1944).

Court emphasized that an intentional, purposeful discrimination is necessary to establish a denial of equal protection of the law for purposes of section 1983.[24]

The uncertainty reflected in the cases as to what is required for an equal protection action is due to the failure of the *Monroe* opinion even to mention *Snowden,* although the complaint in *Monroe* was drawn in terms of a denial of equal protection as well as due process and the *Snowden* decision had preceded that of *Monroe.* By construing *Monroe* and *Snowden* together, it is possible to restrict the elimination of the intent requirement to complaints involving a denial of due process while retaining the stricter requirement of intent for section 1983 complaints alleging a denial of equal protection.[25] Significantly, the decision in *Huey* also neglects to mention *Snowden* in suggesting that a literal reading of *Monroe* would allow the elimination of the intent requirement in due process cases to be extended to section 1983 equal protection cases.[26]

The Standard of Reasonableness

Eliminating the intent requirement for equal protection actions along with extending the ambit of section 1983 to include non-feasance com-

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24. In *Snowden* the Supreme Court stated:

> The unlawful administration of a state statute fair on its face resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination . . . (a) discriminatory purpose is not presumed . . . there must be a showing of clear and intentional discrimination.

321 U.S. at 8.

25. Cohen v. Norris, an unreasonable search and seizure case, announced its interpretation of *Monroe* to be that "an allegation of a purpose to discriminate . . . is not essential to the statement of a claim under section 1983 predicated on . . . the *due process clause* of the fourteenth amendment." (Emphasis added.) Recognizing the continuing validity of *Snowden,* the court in *Cohen* further declared that the ruling of *Snowden* requiring "an element of intentional or purposeful discrimination in order to claim under section 1983 . . . was made with reference to the equal protection clause of the Fourteenth Amendment." 300 F.2d at 27. See also Zanders v. Louisiana State Bd. of Educ., 281 F. Supp. 747 (W.D. La. 1968); Bargainer v. Michal, 233 F. Supp. 271 (N.D. Ohio 1964); and Selico v. Jackson, 201 F. Supp. 475 (S. D. Cal. 1962). At least one commentator has cogently argued that *Monroe* should be so limited "for otherwise every inadvertent or unintentional distinction between persons or classes of persons arising from the administration of state law could give rise to a suit for damages." Klittgard, *supra,* note 12 at 162.

26. The Court declared:

> It is clear that section 1983 has been interpreted to provide a new type of tort: the invasion under color of law of a citizen's constitutional rights. It is also clear that it is not necessary that this invasion be intentional; it may merely be negligent.

277 F. Supp. at 872.

Whereas the language of section 1985 requires a specific "purpose" to deprive persons of equal protection the language of section 1983 itself does not include any such requirement of wilful conduct, but allows recovery from one who "subjects or causes to be subjected" any citizen of the rights protected. See text of section 1983, *supra* note 2.

plaints may create difficult problems for police officers and others engaged in administering the law. A major difficulty may be establishing a standard by which non-action as well as action of police officers can be judged. In place of the intent requirement and consonant with the tort language of *Monroe*, lower courts have applied a standard of "the reasonably prudent man" in actions under section 1983.[27] The main difficulty in replacing intent with a standard of reasonableness lies in the inherent dissimilarity in the two types of cases most frequently arising under section 1983. Due process cases such as *Monroe* generally involve an overt action by a public official.[28] Equal protection cases such as *Huey* may arise without any such overt action or, possibly, without conscious inaction. Not only would officials be liable for an "unreasonable" act or decision, but the non-action of an officer even without knowledge of a dangerous situation could well lead to personal liability.[29]

An additional drawback in applying a test of "reasonableness" under a broad allegation of violation of equal protection is the second guessing to which discretionary decisions of local authorities would be subject.[30] Many factors may enter into such a decision, particularly in law enforcement situations, thus facilitating an argument of "unreasonable" action or inaction. For example, a decision by police authorities to oversaturate Area "A" with police protection because of an abnormally high crime rate in proportion to the number of persons living therein, and to place less personnel in Area "B", a traditionally low crime area, could result in suits challenging the propriety of such an allocation. Additional factors such as the presence or absence of adequate lighting, size of area to be patrolled in relation to persons living therein, availability of additional units and limitations of finances, would have to be analytically evaluated by the person making the allocation decision and

27. Heard v. Rizzo, 281 F. Supp. 720 (E.D. Pa. 1968), "emphasizes plaintiffs' right(s) . . . to be free from the . . . wrongful failure of such officials to take reasonable action to preserve law and order. . . ." Basista v. Weir, 340 F.2d 74, 80 (3d Cir. 1965), speaks in terms of the "right not to be subjected to an unreasonable and illegal arrest." See also Bowens v. Knazze, 237 F. Supp. 826, 828 (N.D. Ill. 1965); Baker v. St. Petersburg, 252 F. Supp. 397, 399 (M.D. Fla. 1966).

28. See description of cases cited in note 15, *supra.*

29. In *Huey* the court stated that a failure to act *with notice* of a possibility of racial disorder, and the possibility of attacks upon Negroes or other persons, would constitute a negligent omission and a denial of equal protection actionable under section 1983. 277 F. Supp. at 873. Under ordinary tort doctrine, however, the adoption of a "reasonableness" standard would seem to allow an action also for the negligent omission of duty even where the defendant was without notice of danger, *i.e.*, where he *should have known* of the danger.

30. See, *e.g.*, McQuire v. Todd, 198 F.2d 60, 63 (5th Cir. 1952), *cert. denied*, 344 U.S. 835 (1952), where the court was apprehensive that "upon the mere allegation . . . every action of a state officer, in the discharge of the duties of his office, may be re-examined in the federal court."

subsequently reviewed under a standard of "reasonableness." A standard of "reasonableness," if loosely applied, would allow any citizen by merely alleging the deprivation of a fourteenth amendment right to place the action, or non-action, of a police officer's performance of his duties in question[31] and subject to the scrutiny of a federal judge or jury.[32]

The application of a "reasonableness" standard to non-action cases also raises subtle problems in determining the culpability of defendants. The conflict inherent in requiring police officers and other public officials to exercise discretion in performing their duties while at the same time holding them liable for errors committed requires a standard which recognizes the potential threats to each side.[33] Too restrictive an application of any standard, however, might effectively eliminate the rights which section 1983 seeks to protect. Thus, in addition to mere "reasonableness," a standard should be utilized which would give full protection to the fourteenth amendment rights of all persons against public officers, as intended under section 1983, but which would limit actions under the statute to those with substantial merit so as not to unduly harass and interfere with public officers in the performance of their duties.

Possible Solutions

In recognition of the fundamental differences between the two types of complaints arising under section 1983 and the need to preserve the rights of citizens while shielding public officials from the threat of undue litigation, a dual standard is needed. It is suggested that retention of the intent requirement as expressed in *Snowden* for equal protection actions, and limiting *Monroe's* elimination of the intent requirement to due process cases would have the desired effect.[34]

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31. In Bargainer v. Michal, 233 F. Supp. 270, 274 (N.D. Ohio 1964) the court speaks of the "interest of the public . . . in seeing that the police do not abuse their power and, conversely, that the police are not harrassed in carrying out their duties by being subjected to unwarranted law suits." For other comments to this effect, see Selico v. Jackson, 201 F. Supp. 475 (S.D. Cal. 1962), and Klittgard *supra* note 12, at 162.

32. Under a "reasonableness" standard, the propriety of each such system for dispersing officers so as to provide the best protection, equally, would ultimately be a decision of the federal district judge—not the local authority who lives and works in, and is most familiar with a particular area. While the advantage of local knowledge would be lost, the district judge, as a neutral arbiter, would perhaps be better suited for determining liability in such cases. Such a system for determining liability could easily lead, however, to the constant harrassment of public officials, by anyone willing to make the allegations as to unreasonable action or inaction.

33. For a description of the potential threat to law enforcement officers, see language quoted *supra* note 14.

34. Maintaining intent as a standard for equal protection cases under section 1983 would avoid plaintiffs challenging non-action of police officers where such officers are without notice of the particular danger giving rise to the duty to act. Thus, as a minimum, knowledge of the danger with an ensuing failure to act "reasonably" would be required for such an action.

If, however, the language of *Monroe* is carried to its full extent with "reasonableness" being adopted as the criterion for liability in both types of cases, as some commentators have suggested,[35] then certain procedural safeguards are necessary to close partially the "floodgates" apparently opened by *Huey*.[36] In an attempt to confine the expansive effect of *Monroe*, several courts,[37] including the *Huey* court,[38] have supplemented the "reasonableness" test by requiring plaintiffs to allege highly specific facts as to acts or omissions by the defendant which have a "causal connection" to the alleged discrimination.[39] If, as *Huey* suggests, any causal connection between an action or inaction regardless of intent, with the resulting deprivation of a constitutional right, will lead to liability, the requirement of highly specific allegations will at least provide a marginal shelter from litigious "victims" of allegedly discriminatory acts. Such a requirement of specificity, however, will not prevent any valid complaint from being raised.

The inappropriateness of the "reasonableness" test is most apparent in omission or non-action cases. Under such a standard liability would presumably attach even where public officers are uninformed of threats to certain persons or classes of persons if it appears that the officers should have been aware of the situation.[40] By adding the requirement of alleging highly specific facts, however, the courts seem to be saying an awareness or knowledge of potential danger with a subsequent failure to act must be present. Certain types of broad omissions cannot be alleged in detail, and a specific act or omission which can be alleged in terms of specific facts would almost certainly be an act or omission of which the defendant was aware.[41] Thus, the addition of the specificity requirement

35. See Colley, *Civil Actions for Damages Arising out of Violations of Civil Rights*, 17 HASTINGS L.J. 189 (1965); Shapo, *supra* note 3; Note, 12 HOWARD L.J. 285, 297 (1966); Comment, *Civil Actions for Damages Under the Federal Civil Rights Statutes*, 45 TEX. L. REV. 1015, 1035 (1967).

36. One writer suggests that "without this procedural requirement of specificity, the floodgates may be opened and the federal courts would be swamped with ordinary tort suits filed under the guise of section 1983." Note, *Liability of a Public Officer for Nonfeasance under* 42 *U.S.C.* § 1983, 25 WASH. & LEE L. REV. 243, 248 (1968).

37. See, *e.g.*, Stiltner v. Rhay, 322 F.2d 314, 316 (9th Cir. 1963); United States *ex rel.* Hoge v. Bolsinger, 311 F.2d 215, 216 (3d Cir. 1962); Fowler v. United States, 258 F. Supp. 638, 645 (C.D. Cal. 1966); Pugliano v. Staziak, 231 F. Supp. 347, 349 (W.D. Pa. 1964); Roberts v. Barbosa, 227 F. Supp. 20, 22 (S.D. Cal. 1964).

38. 277 F. Supp. at 873.

39. 277 F. Supp. at 873. See also Basista v. Weir, 340 F.2d 74 (3d Cir. 1965); Zeppi v. Beach, 229 Cal. App. 2d 152, 40 Cal. Rptr. 183, 187 (1964).

40. The complaint in *Huey* alleges "that the defendants knew or, by the exercise of reasonable care, *should have known* that the presence of Negroes on the public streets of Cicero constituted a hazard to their personal safety. . . ." 277 F. Supp. at 868.

41. It is doubtful that the plaintiff in *Huey*, for example, could have made his allegations any more specific. Thus the requirement of alleging a specific act or omission

when combined with the test of "reasonableness" seems to approach a test of gross negligence—knowledge of danger plus inaction—closely bordering on intent.

Conclusion

Huey v. Barloga suggests that public officers may be held liable for an unintentional omission of their duty to provide equal protection to all persons. In replacing the prior requirement of intentional deprivation of such right for recovery under section 1983, *Huey* adopts the standard of "reasonableness" as applied under traditional tort doctrine. The Supreme Court, however, has apparently eliminated intent only in due process cases arising under section 1983.

Use of a "reasonableness" standard in determining violations of due process rights is logical since such violations typically involve a specific act or omission which can be readily judged against an independent standard of due process. The right of equal protection cannot be fairly judged under a "reasonableness" standard, however, since violations can be determined only by comparison to the situations of others on a case-by-case basis.[42] Consequently, "reasonableness" in the context of equal protection has no well-defined content or reference by which a public officer can gauge his decisions and actions. In addition, equal protection actions under section 1983 commonly involve only a generalized claim of negligence with no specific acts or omissions which can be appraised. It is important that the above distinctions be acknowledged so that courts do not go so far in applying section 1983 to plaintiffs claiming a denial of equal protection as to require public officials to be the guarantors of public safety.

STEPHEN C. EASTHAM

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would prevent an action in all such cases where there was no specific notice of the danger.

42. Concerning liability of public officers for infringing a citizen's rights which are not well defined, Bowens v. Knazze, 237 F. Supp. 826 (N.D. Ill. 1965), states that:

> The measure of a citizen's constitutional rights is not left to the determination of the community at large. It is determined by the courts. If that standard has not yet been enunciated by a court in a manner which makes its applicability to the incident at hand clear, the potential defendant cannot be expected to conform his conduct to it.