

Civil Rights Law
Brooklyn Law School
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Spring 2004

FINAL EXAMINATION

Instructions

1. You will have three hours to complete the examination. The examination consists of **two (2) questions**, worth 60 and 40 points respectively. You may want to allocate your time accordingly. Please note that the questions have multiple parts.
2. There are **eight (8) pages** to this examination, including this instruction sheet. Please be sure that you have all of the pages.
3. You may consult your casebook as well as personally prepared notes and outlines (including materials prepared by classmates with whom you have collaborated/shared materials). You may not consult any commercial outlines, commercial study aids or hornbooks.
4. I am not looking for a “treatise” on Civil Rights Law, but rather a thoughtful “treatment” of the issues presented by the questions. With respect to each question, I strongly recommend that you organize and outline your thoughts before you begin to write your answer.
5. Please pay careful attention to what each question is asking you to do. The question, for instance, may ask you only to assess whether any defenses are available to a particular defendant in a fact pattern.
6. If, in the course of answering a question, you believe that more information is required, describe that information and explain why it is relevant. Likewise, if you deem it necessary to make an assumption not otherwise provided in the question, please state your assumption.
7. Good luck on this examination and in all future endeavors!

QUESTION I (60 Points/Approx. 1 hour, 45 minutes):

Bronx Bombers

After years of anguish, Boston Red Sox baseball fans finally had something to cheer about in October 2004: If they defeated the New York Yankees baseball club in a single game – to be played in Yankee Stadium in the Bronx, New York – they would make the World Series and have a chance to become champions for the first time in decades.

Allston and Brighton, a pair of devoted Red Sox fans from Massachusetts, planned to take matters into their own hands. They knew the star Yankees player was a nervous sort, prone to superstition and anxiety. Allston and Brighton wanted to scare the player into submission, first by making false death threats in the days preceding the game and then following that up by igniting a series of firecrackers from the stands during the game. Allston was in charge of the death threats. Brighton, in turn, took responsibility for the firecrackers, and decided to smuggle them into the stadium by sewing them into the brim of his Red Sox ballcap.

At the outset, their plan seemed to work. Allston called in death threats to the Yankees front office from his cellular phone two days before the game, declaring the Yankees star would be the target of an assassination attempt. The specificity and nature of the threats spurred New York City officials into action. First, the New York City Police Department (NYPD) announced it would double the size of its security force and alerted fans they would need to arrive at the game well ahead of time in order to go through increased security procedures. Second, Hiller, the speaker of the New York City Council, sponsored and eventually succeeded in enacting the following city ordinance, known as the Beantown Bill: All people wearing Red Sox t-shirts and/or ballcaps or driving vehicles bearing Red Sox paraphernalia could be stopped and frisked for weapons by NYPD officers without any other basis for suspecting they were armed and dangerous.

PART I(A). On the day of the game, October 5, 2004, **Allston** made it through security at Yankee Stadium and had just sat down in his seat when a horde of NYPD officers approached him. One of them told Allston “some prosecutors want a word with you. You’re not under arrest, we just need some info.” Allston followed the officers downstairs into a dimly-lit room beneath the stands where he encountered the District Attorney for Bronx County, **Deanna**, and her able sidekick, Chief Assistant District Attorney, **Ellis**. Deanna and Ellis told Allston they knew he was the source of the death threats; they had traced his cell phone number back to him, and matched it up with the credit card that he had used to purchase his ticket to the game. He was going to prison for a long time, they said, unless he confessed and informed them about any accomplices. Allston denied being behind the threats. He said he had shared his cell phone with his friend Fred two days before the game, had no idea who Fred may have given it to, and “there’s no way you can pin this rap on me.”

After hours of heated interrogation, the prosecutors had made no headway. They stepped out and left Allston alone in the room for several additional hours until they returned with a signed affidavit from Fred asserting he had not used or even had access to Allston’s cellular phone on the day the death threats were made. Allston confessed minutes later (though he did not mention Brighton’s involvement) and eventually pleaded guilty to a crime for which he received a sentence of six years in an upstate New York prison. After Allston was convicted, and while he was serving his sentence, he discovered that Fred’s affidavit was a complete fraud – the prosecutors had never even contacted Fred, and had forged the signature on the document.

On October 6, 2007, Allston filed a suit against Deanna and Ellis under 42 U.S.C. 1983 in federal district court seeking monetary damages and alleging the prosecutors had violated his constitutional rights by fabricating evidence against him. Please discuss (1) the individual defenses that might be available to Deanna and Ellis, and (2) any other procedural bases that could be raised by them in moving to dismiss the suit?

PART I(B). On the day of the game, **Brighton** did not even make it through security. An NYPD officer, **Greene**, searched Brighton's cap and easily discovered the firecrackers. Greene did not consider the possibility that Brighton might be involved in the death threats, but he was annoyed by Brighton's smuggling effort and opted to teach him a lesson. He took Brighton to a storage shed in the stadium parking lot, handcuffed him to a chair and turned the television on to a different baseball game – a New York Mets game. The Mets played atrocious baseball that afternoon, and Brighton did not get to see one minute of the Yankees-Red Sox game. After the Mets game finished, Greene escorted Brighton out of the shed and released him. Brighton suffered no physical injuries, but he sought psychiatric help once a week for a month following the incident.

In December 2004, Brighton filed a suit pursuant to 42 U.S.C. 1983 against Greene in New York state court claiming his constitutional rights had been violated. Specifically, Brighton alleged he had been detained and subjected to “cruel and unusual punishment” in violation of the Eighth Amendment to the U.S. Constitution, and sought \$100,000 in compensatory damages. In 2003, the U.S. Court of Appeals for the Second Circuit had affirmed a U.S. District Court decision in which a defendant convicted of crimes related to pornography on cable television had been sentenced to three years’ probation and was forbidden from watching any television whatsoever during his probationary period; the Second Circuit ruled that the sentence did not violate the Eighth Amendment. In an unrelated case decided in 2002, however, the New York State Court of Appeals had found state prison guards to have violated the State Constitution when they forced a prisoner on death row to watch a documentary film about botched executions (electric chairs blowing fuses during executions and so forth). Article I, Section 5 of the New York State Constitution provides, in part, that “nor shall cruel and unusual punishment be inflicted.”

Please discuss (1) the likelihood that Brighton's action will survive an effort by Greene to dismiss it and (2), assuming for purposes of argument that the case survives the motion to dismiss and the jury renders a verdict in Brighton's favor, assess whether he might be able to recover the monetary damages he seeks.

PART I(C). Cambridge had never met Allston or Brighton, but he was a rabid Red Sox fan. On the morning of October 5, 2004, Cambridge was driving to Yankee Stadium from his home in Massachusetts to attend the game – in a car covered in Red Sox bumper stickers and decals – when two NYPD officers pulled him over in the Bronx. The police conducted an exhaustive search of the vehicle, which caused Cambridge to miss the game and which damaged the car beyond repair. The officers found no contraband.

Shortly thereafter, Cambridge filed a suit pursuant to 42 U.S.C. 1983 in federal district court against City Council Speaker Hiller and the City of New York alleging that the Beantown Bill had violated his constitutional rights to free speech and interstate travel. Cambridge sought \$10,000 in compensatory damages from Hiller and equitable relief against the City – specifically, an injunction ordering the City not to enforce the ordinance.

While the suit was pending in federal district court, the City Council repealed the ordinance. In a press conference immediately following the repeal, Hiller announced that “the Beantown Bill may be dead. At least for now.”

What arguments might (1) Hiller and (2) the City make in asking the district court to reject Cambridge’s suit?

Finally, (3) assume for purposes of argument that the Beantown Bill had been enacted by the New York State Legislature rather than the New York City Council, that New York State Police Officers had been the ones who stopped Cambridge, and that the Beantown Bill had not been repealed (i.e., the statute was still in effect throughout Cambridge’s suit). Please discuss whether, given those facts, Cambridge could possibly obtain injunctive relief against the **State of New York**?

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QUESTION II (40 Points/Approx. 1 hr, 15 minutes):

Admissions Ambitions?

The City University of Perfect Town (CUPT) in the State of Bliss had long aspired to improve its reputation in the world of academics and to appeal to stronger students. Yet, formed in order to provide relatively inexpensive access to higher education for all city residents, the CUPT by-laws provided that “Any resident of Perfect Town with a high school or general equivalency degree who seeks admission and scores 900 or higher on the Scholastic Aptitude Test (SAT) shall be admitted, irrespective of the ability to pay.” The CUPT Provost, Sam Smith, believed the best way to bolster the school’s image was to make the admissions process more selective; this could be done by both raising the admissions standards and decreasing the incoming class size.

CUPT was funded exclusively by the City of Perfect Town and was, in effect, a city agency. According to municipal law, in making “significant decisions” related to CUPT operations, the Provost was required to first gain the authorization of CUPT’s President who then would have to secure the approval of the Board of Trustees. Decisions of the Board were nominally reviewable by the Mayor, though as a matter of practice the Mayor almost never actually reviewed Board decisions, much less overturned a decision (just once in four years). As Provost, Smith bore much of the day to day operational responsibility at CUPT. In fact, CUPT’s President, Tabitha Turner, had come to trust Smith so much that she had given him the task of making major employment decisions.

One day Smith pitched his admissions plan to Turner. First, they could amend the by-laws to read “Any resident of Perfect Town with a high school or general equivalency degree who seeks admission and scores 900 or higher on the Scholastic Aptitude Test (SAT) shall be *eligible for admission*, irrespective of the ability to pay.” Then, after the Board of Trustees had signed off on the plan, Smith would hire a new admissions director to administer the program. The current admissions director, Andrews, was a former 1960s radical deeply committed to the historic mission of CUPT and Smith knew Andrews would not be in favor of the new plan. So Smith decided to fire Andrews,

purportedly on the basis that he was “old and out of touch,” and that his “political views were impeding his judgment in admissions decisions.” Both Turner and the Board of Trustees formally supported the change to the by-laws as well as Smith’s decision to fire Andrews.

Smith then set his sights on finding a new admissions director. After an exhaustive search, Smith recruited Rachel Rice from a school in the city across the river. Both Turner and the Board of Trustees formally backed this hiring decision, and the Mayor herself reviewed the decision and supported it, expressing delight at the idea of poaching the admissions director from a rival institution.

Rice accepted the post and immediately began to make CUPT more competitive. Indeed, the average SAT of the admitted students at CUPT soared from 925 to 1050 within two years, and the incoming class size shrunk by 25%. No one knew what, precisely, Rice was basing her admissions decisions on besides SAT scores, but no one in the CUPT administration seemed to care: The school was on the rise!

That is, until Brett Bates, a high school graduate with a 1400 SAT score, was denied admission. Greatly upset by the rejection, and without the financial resources to pay the tuition at any other school, Bates tried to find out why he had been turned down. Rice refused to return Bates’s phone calls, however, and Bates appeared stymied in his efforts until one day he came across a chat room on the internet called “The College Women’s Club.” In that chat room, he saw entries posted by someone whose e-mail address was rach.rice@cupt.edu; those postings proclaimed that opportunities in American colleges and universities should primarily be reserved for women, “the stronger gender.” Bates expanded his internet search and, within a few hours, discovered that Rice had written a thesis in graduate school arguing there should be no scholarships or “free rides” in higher education for men given the advantages traditionally afforded to males, and that women applicants should receive preferential treatment in admissions. Furthermore, Bates soon discovered that the percentage of male students at CUPT had declined by nearly 5% during Rice’s short tenure.

PART II(A). Andrews filed a suit under 42 U.S.C. 1983 in federal district court against the **City of Perfect Town** itself requesting compensatory damages for wrongful termination in violation of both federal statutory law and his First Amendment rights. At trial, the jury returned a verdict against the City, and awarded Andrews \$500,000 in compensatory damages and \$3 million in punitive damages. The City appealed the decision to the U.S. Court of Appeals for the Thirteenth Circuit.

You are a clerk for a judge in the Thirteenth Circuit and she has asked you to write a memorandum explaining the key issues and offering advice as to whether the appellate court should affirm the lower court decision.

PART II(B). After his discoveries on the internet, **Bates** went to an attorney, Lee, who later filed a class action suit against the **City of Perfect Town** itself under 42 U.S.C. 1983 in federal district court on behalf of Bates and other similarly situated individuals: Male applicants to CUPT who had allegedly been unconstitutionally denied admission on the basis of gender. The plaintiffs requested \$120,000 per person in compensatory damages (the average cost of four years' college tuition in the country).

With Bates as the named plaintiff, the group of 50 individuals was certified as a class by the District Court, and the jury later rendered a verdict against the City and awarded each plaintiff \$20,000 in compensatory damages (the cost of four years' tuition at CUPT). Thus, the total amount of compensatory damages awarded was \$1 million. After a hearing, the District Court also awarded \$4 million in attorney's fees. The District Court determined the amount of attorney's fees simply by multiplying the number of hours worked by the legal team (20,000) times an hourly rate of \$200.

The City appealed the decision to the Thirteenth Circuit. You are a clerk for a Thirteenth Circuit judge and he has asked you to write a memorandum explaining the key issues and offering advice as to whether the appellate court should affirm the lower court

END OF EXAMINATION! CONGRATULATIONS!

Exam Number: _____

Question IA **ALLSTON – Prosecutorial Immunity/Habeas Corpus (Heck)/SoL**

| Issue | Subissue | Possible Pts | Student Pts |
|-----------------------------------|-----------------------------------------------------------------------------------|---------------------|--------------------|
| Prosecutorial Immunity --6 points | Absolute Immunity Concept mentioned – Probable Cause trigger | 3 | |
| | Acknowledge this case may be before probable cause | 2 | |
| | Deanna & Ellis treated the same | 1 | |
| Heck Issue -- 4 points | Correct statement of law – if goes to fact or legality of conviction, then habeas | 2 | |
| | Assessment of whether fact or legality – Heck-like | 2 | |
| Statute of Limitations – 3 points | Mention 1988(a) concept | 1 | |
| | Mention personal injury SOL applies | 1 | |
| | Assess likelihood of being over the SoL – most 3-4 years | 1 | |
| Other -- 4 points | Organization/Clarity/Novel Issues | 4 | |
| TOTAL | | 17 | |

Exam Number: _____

Question IB **Brighton – Qualified Immunity/Clearly Estab./Compensatory Damages**

| Issue | Subissue | Possible Pts | Student Pts |
|--------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------|
| Qualified Immunity Test -- 4 pts Basics | Acknowledge G has QI defense | 2 | |
| | Note and apply first part: whether B's allegations, if true, establish a constitutional violation | 2 | |
| Clearly Established Prong – 6 pts | Note second part: clearly established | 1 | |
| | Note interpretation of clearly established: Hope v. Pelzer – “on notice” | 2 | |
| | Apply clearly established in light of our cases – grapple with facts. Being forbidden from watching vs forced to watch; federal v. state | 3 | |
| Compensatory Damages – 3 points | Compensatory damages under normal tort principles | 1 | |
| | Emotional injuries count + apply: his psychiatric visits as evidence | 2 | |
| State Procedural Law – 3 points | Concurrent jurisdiction; Felder/Notice of Claim; Undue Burden/Discrimination | 2 | |
| | Application | 1 | |
| Other -- 4 points | Organization/Clarity/Novel Issues | 4 | |
| TOTAL | | 20 | |

Exam Number: _____

Question IC CAMBRIDGE – Legislative Immunity/Municipal Liability/Article III

| Issue | Subissue | Possible Pts | Student Pts |
|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------|
| Legislative Immunity -- 3 points | Absolute Immunity Concept mentioned and applied | 2 | |
| | Note local legislators count | 1 | |
| Municipal Liability -- 2 points | Official Policy or Custom | 1 | |
| | City ordinance classic example | 1 | |
| Art. III Standing – 6 points | Standing test – three parts; third part (harm the type that could be redressed through judicial relief the key); Lyons | 3 | |
| | Application of Lyons – threat of future harm + likelihood of future harm (dovetails a bit w/ mootness) | 3 | |
| Art. III Mootness – 4 points | Mootness doctrine: “case or controversy,” personal stake – live. | 1 | |
| | Voluntary cessation doctrine | 1 | |
| | Application of voluntary cessation factually – likelihood of reenactment | 2 | |
| State Sovereign Immunity – 4 pts | <ul style="list-style-type: none"> - May not sue state directly for injunctive relief - Must sue state official: EPY/Edelman fiction - Mention no retrospective - Application: State AG, Chief of Police | 4 | |
| Other -- 4 points | Organization/Clarity/Novel Issues | 4 | |
| TOTAL | | 23 | |

QUESTION I: TOTAL RAW SCORE (60) _____

Question IIA ANDREWS – Municipal Immunity/Final Policymaker/Punitives

Exam Number: _____

| Issue | Subissue | Possible Pts | Student Pts |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------|
| Municipal Liability – 10 points | Mention “official policy or custom” | 1 | |
| | Rule: Ad hoc decisions by city officials may rise to the level of “official policy or custom” if made by policymaker w/ final authority in that area. Pembaur; Praprotnik. | 3 | |
| | Analyze policymaker – employment; discretionary v delegated from Turner Analyze final authority – reviewable by Mayor nominally | 6 | |
| Punitive Damages – 3 points | Punitive damages permissible in 1983, but NOT against municipalities | 3 | |
| Other – 4 points | Organization/Clarity/Novel Issues | 4 | |
| TOTAL | | 17 | |

Question IIB

Bates – Class Action/Municipal Liability/Attorney’s Fees

Exam Number: _____

| Issue | Subissue | Possible Pts | Student Pts |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------|
| Class Action – 2 points | Acknowledge class action OK for 1983 – brief discussion | 2 | |
| Municipal Liability – 4 points | Repeat of IIA, official policy or custom | 2 | |
| | Here, Mayor reviewed – final authority | 2 | |
| Attorney’s Fees – 12 points | Describe/cite 1988(b) modified fee-shifting – “Prevailing Party” gets “reasonable” fees | 2 | |
| | “Lodestar” as starting place (time X hours), but may be adjusted upward or downward based on other factors | 2 | |
| | Most critical other factor – “results/success obtained” | 2 | |
| | ANALYSIS HERE: <ul style="list-style-type: none"> - Degree of Success: 20K vs 120K - Proportionality - Lodestar: billing judgment re 20,000 hours - \$200 hourly rate reasonable? - DC “Discretion” defer | 5 | |
| | Mention of contingent fee possibility (non-fact) that might be a factor | 1 | |
| Other -- 4 points | Organization/Clarity/Novel Issues | 4 | |
| BONUS POINT - 1 | | 1 | 1 |
| TOTAL | | 23 | |

QUESTION II: TOTAL RAW SCORE (40) _____

Total Question 1: _____

Exam Number: _____

Total Question 2: _____

TOTAL SCORE: _____