

# Yankee Go Home Civil Rights Volunteer Attorneys and the Unauthorized Practice of Law

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## COMMENT

### “YANKEE GO HOME”—CIVIL RIGHTS VOLUNTEER ATTORNEYS AND THE UNAUTHORIZED PRACTICE OF LAW

Since the historic decision in *Brown v. Board of Education*,<sup>1</sup> several Southern States have resisted enforcement of federal constitutional and statutory directives concerning racial equality. The form of resistance has ranged from direct confrontation with federal authority<sup>2</sup> to more subtle attacks on civil rights organizations<sup>3</sup> or their legal representatives.<sup>4</sup>

The recent influx of volunteer attorneys from other parts of the country has exposed the civil rights movement to a new method of attack. Since few of the attorneys are members of the bar of the states in which they operate, the prohibitions against the unauthorized practice of law can be used effectively to restrict their activities. With a few notable exceptions,<sup>5</sup> the volunteers were initially welcomed by the Southerners;<sup>6</sup> but several recent incidents indicate that animosity is increasing. Threats of penal action have been made against leading

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<sup>1</sup> 347 U.S. 483 (1954).

<sup>2</sup> The most striking example of direct confrontation is the defiance in 1957 by Arkansas Governor Faubus of a federal court order to integrate Little Rock Central High School.

<sup>3</sup> See *NAACP v. Alabama*, 357 U.S. 449 (1958). The NAACP opened an Alabama office without complying with the state statute requiring corporations to qualify before doing business in the state. A restraining order was issued, and on the state's motion the court ordered the production of the NAACP's membership list. The Supreme Court held that such state action infringed the freedom of association.

<sup>4</sup> The earliest attacks were in the form of special antisolicitation statutes aimed at preventing organizations such as the NAACP from sponsoring civil rights litigation. This practice was struck down on first and fourteenth amendment grounds in *NAACP v. Button*, 371 U.S. 415 (1963). See generally Comment, *The South's Amended Barratry Laws: An Attempt To End Group Pressure Through the Courts*, 72 YALE L.J. 1613 (1963).

<sup>5</sup> There were a few early instances of hostility on the part of the local bar. See Sitton, *Mississippi Is Said To Misapply Laws*, N.Y. Times, July 12, 1964, at 53, col. 1, reporting the successful attempt by two Mississippi attorneys to prevent a New York attorney from representing a white civil rights worker in a Mississippi court. See also Letter from attorney Ralph Shapiro to the *Cornell Law Review*, April 7, 1967 (on file in the Cornell Law Library), describing a similar experience.

<sup>6</sup> See Driesen, *A Civil Rights Setback in Southern Courts*, 36 THE REPORTER, Feb. 23, 1967, at 18.

civil rights attorneys,<sup>7</sup> and a substantial number of state courts have issued blanket prohibitions against practice by out-of-state attorneys on a *pro hac vice* basis.<sup>8</sup> A few federal judges have similar rules.<sup>9</sup> State bar associations have also taken action against civil rights volunteers.<sup>10</sup>

Designed originally to protect the public from incompetent legal advice and services, the laws against unauthorized practice may become a tool for depriving the Southern Negro community of legal representation in civil rights cases. When combined with a vigorous assault on local attorneys who regularly represent civil rights litigants,<sup>11</sup> an exclusion of out-of-state volunteers could create a vacuum in which Southern Negroes will be unable to assert their rights in court for want of effective assistance of counsel.

## I

### BACKGROUND

#### A. *The Volunteer Movement*

The large-scale influx of volunteer attorneys into the South began in the summer of 1964 with "Project Mississippi," sponsored by the National Lawyers Guild.<sup>12</sup> The purpose of the Guild project was explained by its president: "Our concern in the Mississippi Project is to

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<sup>7</sup> In November 1966 Donald A. Jelinek, former staff counsel of the Alabama office of the Lawyers Constitutional Defense Committee (LCDC), was arrested for unauthorized practice. Prior to his arrest, Jelinek had practiced in association with members of the local bar for more than a year. His right to practice was challenged by a member of the Alabama Bar. Jelinek has since left Alabama and the charges against him have been dropped. *Id.*

In February 1967 Richard B. Sobol, staff counsel of LCDC's Louisiana office, was arrested for unauthorized practice. Sobol had been practicing in association with the New Orleans firm of Collins, Douglas & Elie and had been introduced to the court by Mr. Collins as his associate. Amended complaint, *Sobol v. Perez*, Civil No. 67-243 (E.D. La., filed Feb. 27, 1967).

<sup>8</sup> Brief for LCDC as Amicus Curiae at 4, *Rowe v. Mississippi*, Civil No. WC 676 (N.D. Miss., filed March 9, 1967). See also Driesen, *supra* note 6, at 19-20.

<sup>9</sup> 2 UNITED STATES COMMISSION ON CIVIL RIGHTS, HEARINGS 320 (1965).

<sup>10</sup> In October 1966 a special committee of the Mississippi Bar Association was formed to "investigate charges arising from legal matters involving people who might not be licensed to practice law in Mississippi." Driesen, *supra* note 6, at 19.

<sup>11</sup> In January 1967 Lackey Rowe, a Mississippi attorney and member of the Lawyer's Committee for Civil Rights Under Law, was jailed for contempt when he attempted to discover why one of his clients was being arrested during a criminal proceeding in which the client was a defendant. Rowe's appearance in court on the day of his arrest was on behalf of 43 defendants in a civil-rights-oriented criminal prosecution. The judge who ordered Rowe jailed had a blanket rule against appearances by out-of-state attorneys. There is no record whether these defendants were able to obtain counsel for their defense after Rowe was jailed. Brief for LCDC as Amicus Curiae at 5-6, *Rowe v. Mississippi*, Civil No. WC 676 (N.D. Miss., filed March 9, 1967).

<sup>12</sup> NATIONAL LAWYERS GUILD, PROJECT MISSISSIPPI 2-3 (1964).

attempt to redress the lack of available lawyers in Mississippi, ready, willing and able to handle civil rights cases."<sup>13</sup>

Two other groups were formed at the same time, and both are continuing to provide volunteer assistance. The Lawyers Constitutional Defense Committee (LCDC) began working with the Council of Federated Organizations, a coalition of civil rights groups in Mississippi, and has since expanded its activities to include staff offices in Alabama, Louisiana, and Mississippi. The Lawyer's Committee for Civil Rights Under Law (President's Committee) began sending volunteers to the South in 1964 and now has a full-time staff in Jackson, Mississippi, consisting of five attorneys assisted by three or four different volunteers each month.

Most of the attorneys presently working with these groups are not members of the local bar and usually practice in association with the few locally licensed attorneys available for civil rights work.<sup>14</sup> The other major group providing legal services to the civil rights movement, the NAACP Legal Defense and Educational Fund, Inc. (LDF), depends almost entirely on local counsel and does not ordinarily encounter unauthorized practice problems.<sup>15</sup>

The early work of the volunteer organizations centered on providing defense counsel for civil rights workers accused of crimes. Since then their activity has expanded to include institution of affirmative actions against state officials in the federal courts and representation of Negroes in ordinary civil actions, both as plaintiffs and defendants. Those who have participated in the volunteer program are convinced that the groups have been and continue to be a valuable asset to the civil rights movement.<sup>16</sup> The presence of attorneys to explain and defend constitutional rights has helped to restrain overt intimidation by law enforcement officials<sup>17</sup> and has given the Southern Negro community a greater confidence in, and respect for, the law as a means of achieving justice.<sup>18</sup>

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<sup>13</sup> *Id.* at 3.

<sup>14</sup> The purpose and activity of LCDC has been expressly approved by the American Bar Association. Standing Committee on Professional Ethics, Opinion No. 786, Dec. 24, 1964.

<sup>15</sup> Interview with LDF staff attorneys, New York City, March 31, 1967.

<sup>16</sup> *E.g.*, Honnold, *The Bourgeois Bar and the Mississippi Movement*, 52 A.B.A.J. 228 (1966). (Professor Honnold headed the Mississippi office of the President's Committee during June 1965). Interview with Robert Lunney, President's Committee, New York City, August 11, 1967.

<sup>17</sup> Honnold, *supra* note 16.

<sup>18</sup> Letter from Denison Ray, Chief Counsel for the President's Committee, to the *Cornell Law Review*, March 24, 1967 (on file in the Cornell Law Library).

The groups have not met with success on all fronts. One goal was to promote greater participation in civil rights cases by local white practitioners. Although there is some evidence of increased participation,<sup>19</sup> most Southern white attorneys remain, for several reasons, unwilling to take part in civil rights cases.<sup>20</sup> Many of those who have done civil rights work have suffered economic reprisals,<sup>21</sup> threats of violence, social ostracism, and legal harassment.<sup>22</sup> Many Southern attorneys refuse to participate simply because they are unsympathetic to the civil rights movement.<sup>23</sup>

The staggering burden of casework, therefore, rests almost entirely on the shoulders of local Negro attorneys, not all of whom do civil rights work, and on the staff members and volunteers of the civil rights groups.<sup>24</sup> Keeping volunteers out of the South will continue to restrict the peaceful progress of the civil rights movement; if Southern Negroes are left without representation to pursue their rights legally, their only alternative is self-help.

#### B. *Unauthorized Practice*

Since most attorneys engaged in civil rights work in the South are nonresidents and are not licensed to practice in the Southern

<sup>19</sup> Doyle, *Southern Justice*, 37 Miss. L.J. 428, 441-43 (1966).

<sup>20</sup> Honnold, *supra* note 16, at 231. In 1963 the United States Civil Rights Commission conducted a questionnaire survey of 3,555 lawyers in Southern and Border States. Although only 37.2% of those questioned responded, the results illustrate the limited number of lawyers who participate in civil rights cases. Of those responding, only 14% had represented Negroes in civil rights cases in the last eight years, a third of whom reported "threats of physical violence, loss of clients, or social ostracism as a result." Twenty per cent of the respondents were Negro. 1963 REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS 117-19.

<sup>21</sup> Honnold, *supra* note 16, at 232, reports the case of Warren Fortson, presently a President's Committee staff attorney, whose own practice was "destroyed by his stand on civil rights."

<sup>22</sup> Carter, *A Lawyer Leaves Mississippi*, 28 THE REPORTER, May 9, 1963, at 33, discusses the story of William Higgs, who left Mississippi after a period of harassment culminating in a criminal prosecution in which he was convicted, in absentia, of contributing to the delinquency of a minor. Higgs's departure left "only one white lawyer who regularly handles civil rights cases . . . in all twelve Southern states . . ." *Id.*

<sup>23</sup> Complaint is also voiced that our lawyers do not view the efforts of the civil rights workers "sympathetically." To that indictment, we plead guilty. We view those efforts as harmful, as destructive of good racial relations, and as an intolerable intrusion into our affairs by a group which has no real concern for the welfare of our community.

Lockett, *Clarksdale Customs*, 37 Miss. L.J. 419, 425 (1966).

<sup>24</sup> C. B. King, a Negro attorney in Georgia, had over 2,000 civil rights cases pending during 1964. Pollitt, *Timid Lawyers and Neglected Clients*, 229 HARPER'S, Aug. 1964, at 81, 83. The LCDC Docket for October 1966 shows over 400 cases involving more than 2,000 plaintiffs and defendants. In 1965 there were only 4 Negro attorneys in the entire state of Mississippi. 2 UNITED STATES COMMISSION ON CIVIL RIGHTS, HEARINGS 321 (1965).

States, the prohibition against unauthorized practice of law<sup>25</sup> furnishes a tool for the states to restrict the volunteers' activities.

### 1. "Practice of Law"

Volunteer attorneys are not subject to sanctions for unauthorized practice unless their activity constitutes the practice of law. Though the term is not easily defined,<sup>26</sup> "practice of law" generally includes all the uniquely professional activities of a qualified, licensed attorney.<sup>27</sup> To determine whether any particular activity constitutes the practice of law, resort must be had to the particular jurisdiction's case law.

Certain activities of the volunteer attorneys may fall outside the definition. A leading Louisiana case, for example, supports the theory that mere investigation does not constitute the practice of law.<sup>28</sup> Though the line between investigation and legal advice is a fine one, ferreting out facts, interviewing witnesses, and generally marshalling evidence should not, under this theory, subject the volunteer attorney to charges of unauthorized practice.<sup>29</sup>

Many jurisdictions do not proscribe services performed gratuitously. In an advisory opinion to the legislature, the Massachusetts Supreme Judicial Court stated that "[t]he gratuitous furnishing of legal aid to the poor and unfortunate without means in the pursuit of any civil remedy, as a matter of charity, [does] . . . not constitute the practice of law."<sup>30</sup> Though the principle is not universally accepted,<sup>31</sup> many state legislatures, including those of Alabama,<sup>32</sup> Lou-

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<sup>25</sup> E.g., ALA. CODE tit. 46, § 31 (1958); LA. REV. STAT. ANN. § 37:213 (1964); MISS. CODE ANN. § 8682 (1956).

<sup>26</sup> *Cowern v. Nelson*, 207 Minn. 642, 646, 290 N.W. 795, 797 (1940) ("The line between what is and what is not the practice of law cannot be drawn with precision."). See also *State ex rel. Indiana State Bar Ass'n v. Indiana Real Estate Ass'n*, 244 Ind. 214, 191 N.E.2d 711 (1963); *Lowell Bar Ass'n v. Loeb*, 315 Mass. 176, 183, 52 N.E.2d 27, 32 (1943); *State ex rel. Johnson v. Childe*, 139 Neb. 91, 94, 295 N.W. 381, 383 (1941).

<sup>27</sup> *State Bar v. Arizona Land Title & Trust Co.*, 90 Ariz. 76, 366 P.2d 1 (1961), *supplemented*, 91 Ariz. 293, 371 P.2d 1020 (1962); *Rhode Island Bar Ass'n v. Automobile Serv. Ass'n*, 55 R.I. 122, 179 A. 139 (1935); see *In re Eastern Idaho Loan & Trust Co.*, 49 Idaho 280, 286, 288 P. 157, 159 (1930).

<sup>28</sup> *Meunier v. Bernich*, 170 So. 567 (La. App. 1936) (dictum). The court found that the defendant's activity exceeded mere investigation.

<sup>29</sup> Cf. *State v. Woodville*, 161 La. 125, 108 So. 309 (1926).

<sup>30</sup> Opinion of the Justices to the Senate, 289 Mass. 607, 615, 194 N.E. 313, 317-18 (1935); *accord*, *State v. Adair*, 34 Del. 585, 586, 156 A. 358, 359 (1922) (test is whether the services were performed for a "fee or reward").

<sup>31</sup> *State Bar v. Arizona Land Title & Trust Co.*, 90 Ariz. 76, 366 P.2d 1 (1961), *supplemented*, 91 Ariz. 293, 371 P.2d 1020 (1962), held that reliance by a client is more important than the question of compensation. Referring to the "fee or reward" theory, one court asserted: "It might as well be said that a surgeon who performs, without fee

isiana,<sup>33</sup> and Mississippi,<sup>34</sup> have partially adopted it. The statutes typically distinguish between in-court services and out-of-court advice, applying the fee or reward proviso only to the latter; any court appearance constitutes the practice of law.<sup>35</sup>

## 2. *Temporary Admission to the Bar*

The simplest and most obvious method of avoiding sanctions for unauthorized practice is for the volunteer attorney to gain admission to the bar of the state in which he operates. Staff attorneys may seek permanent admission.<sup>36</sup> But since most volunteers are in the South for a very short period, their only practical alternative is to seek *pro hac vice* admissions on a case-by-case basis.<sup>37</sup>

All Southern States allow nonresident attorneys to practice in a particular case upon satisfaction of certain conditions. The *pro hac vice* admission is a matter of privilege, not of right,<sup>38</sup> and the court is

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or reward, a tonsilectomy or appendectomy is not practicing surgery." *State ex rel. Wright v. Barlow*, 131 Neb. 294, 297, 268 N.W. 95, 96 (1936).

<sup>32</sup> ALA. CODE tit. 46, § 42 (1958).

<sup>33</sup> LA. REV. STAT. ANN. § 37:212 (1964).

<sup>34</sup> MISS. CODE ANN. § 8682 (1956).

<sup>35</sup> The courts have inherent power to regulate the practice of law. Although legislatures may enact statutes assisting the courts, they may not restrict the courts' power. *Liebttag v. Dilworth*, 25 Pa. D. & C.2d 221 (C.P. 1962) (holding that statutes which purport to authorize a lay person to engage in the practice of law are invalid, since the power to define the practice of law is in the judiciary and not in the legislature). *Grievance Comm. v. Coryell*, 190 S.W.2d 130 (Tex. Civ. App. 1945); *Grievance Comm. v. Dean*, 190 S.W.2d 126 (Tex. Civ. App. 1945). See also *Arizona State Bar v. Arizona Land Title & Trust Co.*, 90 Ariz. 76, 366 P.2d 1 (1961), *supplemented*, 91 Ariz. 293, 371 P.2d 1020 (1962); *Rhode Island Bar Ass'n v. Automobile Serv. Ass'n*, 55 R.I. 122, 179 A. 139 (1935); *Appeal of Cichon*, 227 Wis. 62, 278 N.W. 1 (1938). Thus, even where a state legislature has excluded gratuitous out-of-court advice from the statutory prohibition, the courts may impose broader restrictions on civil rights volunteers. When asked to enjoin the volunteer's activity, for instance, the court will not be bound by legislative definitions. *Darby v. Board of Bar Admissions*, 185 So. 2d 684 (Miss. 1966) (dictum). The legislative definition will, however, take on importance when penal sanctions are imposed, since courts may not define new crimes not provided for in the statute. *Washington State Bar Ass'n v. Washington Ass'n of Realtors*, 41 Wash. 2d 697, 251 P.2d 619 (1952). See also *Meunier v. Bernich*, 170 So. 567 (La. App. 1936).

<sup>36</sup> For example, Marian Wright, staff attorney for LDF in Mississippi, was recently admitted to the bar of that state. Interview with LDF staff attorneys in New York City, March 31, 1967.

<sup>37</sup> The custom of granting *pro hac vice* admissions was recognized in England as early as 1629 in *Thursby v. Warren*, 79 Eng. Rep. 738 (C.P. 1629). The practice was accepted in the United States by 1876. *In re Mosness*, 39 Wis. 509 (1876); see 1 E. THORNTON, ATTORNEYS AT LAW 22 (1914).

<sup>38</sup> See MISS. CODE ANN. § 8666 (1956), which provides in part: "It is hereby declared to be the public policy of the State of Mississippi that the practice of law before any court or administrative agency is a matter of privilege and not a matter of right."

vested with broad discretion to grant or deny admission. Statutes relating to *pro hac vice* admissions are generally permissive rather than mandatory.<sup>39</sup> Even a statute mandatory on its face<sup>40</sup> would not absolutely bind the courts, which have the inherent power to regulate admission to practice.<sup>41</sup>

Louisiana and Mississippi have statutory provisions for *pro hac vice* admissions. In Louisiana, a nonresident attorney may practice in association with a Louisiana attorney or may practice alone after receiving a *pro hac vice* admission from the court in which he wishes to appear.<sup>42</sup> Admission is conditioned upon the presentation of satisfactory evidence that the state in which the attorney is licensed would allow a Louisiana attorney to practice alone.<sup>43</sup> Until the judge issues an order admitting the applicant, no papers may be filed on which he appears as the attorney of record.<sup>44</sup>

Mississippi provides for *pro hac vice* admission of nonresidents who are in good professional standing and of good character, and who are familiar with the ethics, practices, and customs of the Mississippi Bar. The nonresident must subject himself to the jurisdiction of the State Board of Bar Admissions. Two Mississippi attorneys, not of the same firm, may question the attorney's membership in, or financial contributions to, any organization during the five years immediately preceding the investigation, and may challenge his right to practice.<sup>45</sup>

Alabama has no reference to *pro hac vice* admissions either in its statutes or supreme court rules. Jurisdiction over admissions is vested in the supreme court, and the rules of the state bar provide that a nonresident attorney may be permitted to appear in a particular case after obtaining an introduction and recommendation from a member of the Board of Commissioners of the state bar.<sup>46</sup>

Application for temporary admission may often be a fruitless venture, however, since many local judges have blanket rules against *pro hac vice* admissions. If temporary admission is impossible, the volunteer must either run the risk of criminal prosecution or stop

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<sup>39</sup> See, e.g., MISS. CODE ANN. § 8666 (1956).

<sup>40</sup> LA. REV. STAT. ANN. § 37:215 (1964) provides that the court "shall" admit attorneys who meet the statutory requirements.

<sup>41</sup> See note 35 *supra*.

<sup>42</sup> LA. REV. STAT. ANN. § 37:214 (1964).

<sup>43</sup> *Id.* § 37:215. The fundamental requirement, of course, is that the applicant be an attorney at law. *State v. Henry*, 196 La. 218, 198 So. 910 (1940).

<sup>44</sup> LA. REV. STAT. ANN. § 37:216 (1964).

<sup>45</sup> MISS. CODE ANN. § 8666 (1956). See note 5 *supra*.

<sup>46</sup> 4 MARTINDALE-HUBBELL LAW DIRECTORY 7 (1967).

practicing in the South. Threatened with prosecution, LCDR attorney Richard B. Sobol recently chose a third alternative. Joining two of his clients as plaintiffs, he challenged the constitutionality of the prosecution, petitioning the federal district court to enjoin the threatened activity.<sup>47</sup> To succeed, Sobol must establish first, that the state action violates constitutional rights and second, that federal injunctive relief is appropriate.

## II

### THE INDIVIDUAL V. THE STATE: CONFLICT OF RIGHTS AND POWERS

In challenging a court's denial of *pro hac vice* admission or a criminal charge of unauthorized practice, the civil rights attorney probably cannot depend on an assertion of his own constitutional rights.<sup>48</sup> *Schwartz v. Board of Bar Examiners*<sup>49</sup> makes it clear that a state may not constitutionally refuse permanent admission to the bar in an arbitrary or capricious fashion. But since it may be impossible for a court to ascertain the qualifications of an attorney requesting only temporary admission, the *Schwartz* principles may not apply to *pro hac vice* admissions. Since local attorneys are generally unavailable for civil rights cases, however, the civil rights volunteer may be able to advance the rights of his clients as a limit on the state's discretionary power to restrict his activities. Such a limitation could be based upon one of four distinct constitutional theories.

#### A. First Amendment

The first amendment rights of potential litigants provide the most significant limitation on the state's power to restrict the practice of the volunteer attorneys. In *NAACP v. Button*,<sup>50</sup> the Supreme Court recognized for the first time that civil rights litigation is a "form of

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<sup>47</sup> Sobol v. Perez, Civil No. 67-243 (E.D. La., filed Feb. 27, 1967). The hearing for injunctive relief is expected to take place in the fall of 1967 before a three-judge panel. An amicus curiae brief is being prepared by several prominent law firms in support of Sobol's position. Interview with Robert Lunney, President's Committee, New York City, August 29, 1967.

<sup>48</sup> There is no constitutional right to practice law. *In re Lockwood*, 154 U.S. 116 (1893); *Bradwell v. State*, 83 U.S. (16 Wall.) 130 (1872); *Saier v. State Bar*, 293 F.2d 756 (6th Cir.), cert. denied, 368 U.S. 947 (1961); *Application of Levy*, 214 F.2d 331 (5th Cir. 1954); *Keeley v. Evans*, 271 F. 520 (D. Ore.), appeal dismissed, 257 U.S. 667 (1921); *Moity v. Louisiana State Bar Ass'n*, 239 La. 1081, 121 So. 2d 87 (1960); *In re Peters*, 250 N.Y. 595, 166 N.E. 337 (1929).

<sup>49</sup> 353 U.S. 232 (1957). Although the state may require high standards for admission to the bar, the prescribed qualifications must have a rational connection to the applicant's fitness to practice. *Id.* at 239.

<sup>50</sup> 371 U.S. 415 (1963).

political expression,"<sup>51</sup> and thus falls within the protection of the first amendment.<sup>52</sup>

The right to litigate is meaningless without the effective assistance of counsel.<sup>53</sup> Since local counsel are generally unavailable for civil rights cases, out-of-state attorneys are often the only source of legal assistance.<sup>54</sup> Thus, when a state prevents these volunteers from practicing, it effectively deprives the Negro of access to the courts. Such deprivation of essential rights is valid only if the state can demonstrate that "substantive evils"<sup>55</sup> flow from the activities of the volunteers.

One year after *Button*, the Court again employed the first amendment to limit state regulation of attorneys. In *Brotherhood of Railroad Trainmen v. Virginia*,<sup>56</sup> the Court relied more heavily on freedom of association than on freedom of expression, implying that a citizen has not only the right to litigate but also the right to associate for that purpose. Arguably, each Southern Negro is "associated" with the individual plaintiff in each civil rights case;<sup>57</sup> when one litigant successfully establishes his rights in court, the fruits of his victory are shared by all. To frustrate the individual's attempt to litigate by denying him an attorney is to render meaningless the Southern Negro community's right to association.

#### B. *Right to Counsel of One's Choice*

In *Powell v. Alabama*,<sup>58</sup> the Supreme Court stated:

If in any case, *civil or criminal*, a *state or federal* court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.<sup>59</sup>

Since the *Powell* case, the Supreme Court has consistently reaffirmed this principle in appeals from both federal and state courts.<sup>60</sup> The

<sup>51</sup> *Id.* at 429.

<sup>52</sup> *Id.*

<sup>53</sup> *Gideon v. Wainwright*, 372 U.S. 335, 344-45 (1963); *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932).

<sup>54</sup> See *Spanos v. Skouras Theatres Corp.*, 364 F.2d 161, 170 (2d Cir.), *cert. denied* 385 U.S. 987 (1966).

<sup>55</sup> *NAACP v. Button*, 371 U.S. 415, 444 (1963).

<sup>56</sup> 377 U.S. 1 (1964).

<sup>57</sup> Many civil rights cases are class actions. Furthermore, the attorneys themselves are members of associations dedicated to advancing civil rights through court action.

<sup>58</sup> 287 U.S. 45 (1932).

<sup>59</sup> *Id.* at 69 (emphasis added).

<sup>60</sup> *Crooker v. California*, 357 U.S. 433, 439 (1958) (dictum) (overruled on another

decisions have made it clear that the right to counsel of one's choice includes not only fair opportunity and reasonable time to employ such counsel, but a guarantee that the chosen attorney have sufficient time to prepare the case.<sup>61</sup> In reviewing denials of *pro hac vice* admissions to out-of-state counsel chosen by the litigant, however, courts have reached inconsistent results.

In *United States v. Bergamo*,<sup>62</sup> the Third Circuit reversed a lower court's denial of *pro hac vice* admission to an out-of-state attorney attempting to appear for the defendant in a criminal action.<sup>63</sup> A subsequent decision by a federal district court in New York,<sup>64</sup> however, upheld such a denial, approving the state court's statement that "counsel of his own choosing means counsel recognized by the courts of this state."<sup>65</sup>

Most cases brought by the volunteer attorneys are civil actions.<sup>66</sup> If, as suggested in *Bergamo*, the right to counsel of one's choice is based on the sixth amendment, it would not apply to civil litigants.<sup>67</sup> But in light of the concept's original formulation as a due process guarantee, the distinction between civil and criminal cases is probably unjustified.<sup>68</sup>

point by *Miranda v. Arizona*, 384 U.S. 436, 479 (1966)); *Chandler v. Fretag*, 348 U.S. 3, 9 (1954); *Glasser v. United States*, 315 U.S. 60, 70 (1942).

<sup>61</sup> *United States v. Mitchell*, 354 F.2d 767 (2d Cir. 1966); *United States v. Johnston*, 318 F.2d 288 (6th Cir. 1963).

<sup>62</sup> 154 F.2d 31 (3d Cir. 1946).

<sup>63</sup> The trial judge had promulgated a blanket rule excluding out-of-state counsel. The Third Circuit stated that "[t]o hold that defendants in a criminal trial may not be defended by out-of-the-district counsel selected by them is to vitiate the guarantees of the Sixth Amendment." *Id.* at 35. The court explicitly reserved the question whether this right extends to civil cases. In striking down the rule the court ignored a more limited basis for decision. The trial court had subsequently refused to grant local counsel's request for a continuance to prepare for the trial.

<sup>64</sup> *New York v. Epton*, 248 F. Supp. 276 (S.D.N.Y. 1965).

<sup>65</sup> *Id.* at 277. The problem implicit in applying *Epton* in the present context is that counsel recognized by the state may not provide effective assistance because they are unwilling to raise constitutional issues. See *United States ex rel. Goldsby v. Harpole*, 263 F.2d 71 (5th Cir.), cert. denied, 361 U.S. 850 (1959), where the Fifth Circuit stated:

As Judges of a Circuit comprising six states of the deep South, we think that it is our duty to take judicial notice that lawyers residing in many southern jurisdictions rarely, almost to the point of never, raise the issue of systematic exclusion of Negroes from juries.

*Id.* at 82.

<sup>66</sup> See *Doyle, Southern Justice*, 37 Miss. L.J. 428, 443 (1966). The author states that approximately 80% of civil rights litigation is civil rather than criminal and usually affirmative in nature.

<sup>67</sup> See note 63 *supra*.

<sup>68</sup> See p. 125 *supra*.

### C. *Privileges and Immunities*

The privileges and immunities clause of the fourteenth amendment may, under certain circumstances, protect a citizen's right to counsel of his choice, even if the attorney is not licensed in the particular jurisdiction. A recent Second Circuit case, *Spanos v. Skouras Theatres Corp.*,<sup>69</sup> held that a state may not constitutionally prohibit a citizen with a federal claim or defense from engaging an out-of-state attorney to assist and advise local counsel. The case expressly reserved the question whether the privilege extends to having the out-of-state attorney appear in court.<sup>70</sup> To be of real value in civil rights cases, of course, the privilege must be expanded to include court appearances. Since local counsel are usually unavailable, mere advice will only increase the Negro's resentment towards the false promises of the traditional machinery of justice. Denied legal means of redressing grievances, the Negro community is likely to rebel against the established order and use force where peaceful means have failed.

The solution to the problem left unresolved by *Spanos* is suggested by *Lefton v. City of Hattiesburg*.<sup>71</sup> The Fifth Circuit there indicated that the absence of available local counsel limits the courts' traditional discretion to grant or deny *pro hac vice* admissions and to prescribe rules governing the conduct of out-of-state attorneys. Referring to a district court's rule that local counsel must be associated with all litigation, the court stated that "if no local counsel are available, a court rule requiring local counsel should be waived."<sup>72</sup> *Lefton* was cited with approval in *Spanos*, where the court noted that "in instances where the federal claim or defense is unpopular, advice and assistance by an out-of-state lawyer may be the only means available for vindication."<sup>73</sup>

A further difficulty is presented by the *Spanos* court's statement that "we in no way sanction a practice whereby a lawyer not admitted to practice by a state maintains an office there and holds himself out to give advice to all comers on federal matters."<sup>74</sup> This suggests that an out-of-state attorney must be asked to participate in a specific case before he may practice in the state. Such a restriction in civil rights cases would render the volunteer groups impotent. Since the civil

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<sup>69</sup> 364 F.2d 161 (2d Cir.), *cert. denied*, 385 U.S. 987 (1966).

<sup>70</sup> *Id.* at 170-71.

<sup>71</sup> 333 F.2d 280 (5th Cir. 1964).

<sup>72</sup> *Id.* at 285.

<sup>73</sup> 364 F.2d at 170.

<sup>74</sup> *Id.* at 171.

rights attorneys operate without accepting fees, however, the language of *Spanos* may not apply. The case in which *Spanos* assisted was an anti-trust suit, and the principal litigation was an action to collect over \$89,000 in legal fees. The distinction between private commercial cases and cases where the object of suit is not personal gain was recognized in *Lefton*,<sup>75</sup> and in *NAACP v. Button*<sup>76</sup> the Supreme Court regarded the services rendered in civil rights cases as less likely to create regulatory problems than "the use of the legal process for purely private gain."<sup>77</sup>

#### D. *Equal Protection*

In *Griffin v. Illinois*<sup>78</sup> and *Douglas v. California*,<sup>79</sup> the Supreme Court struck down laws which, though reasonable on their face and impartially enforced, in practice worked a de facto discrimination against the poor. Rules of court that, in operation, curtail the civil rights of a racial group are similarly open to question, especially when there is evidence that the purpose of the rule is to impede the enforcement of civil rights rather than to protect a substantial regulatory interest.<sup>80</sup> The practical effect of a blanket rule against *pro hac vice* admissions is to deny representation in the courts to Southern Negroes who are unable to obtain local counsel. Although the white litigant is similarly restricted in obtaining outside counsel, he is able to obtain local counsel.

#### E. *State Regulatory Interest*

The state, of course, has a legitimate interest in maintaining high standards of professional integrity and competence. A primary concern is that the out-of-state attorney may be unfamiliar with the state law, especially local procedural rules. Although some out-of-state attorneys may be familiar with local law, the state may defend a blanket restriction as the only practical means of excluding the incompetent. It is impractical to examine every applicant thoroughly to determine his

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<sup>75</sup> 333 F.2d at 287.

<sup>76</sup> 371 U.S. 415 (1963).

<sup>77</sup> *Id.* at 443.

<sup>78</sup> 351 U.S. 12 (1956). Illinois law required a certified bill of exceptions for appellate review. A stenographic transcript of the trial proceedings was usually necessary and was furnished free only to indigents sentenced to death.

<sup>79</sup> 372 U.S. 353 (1963). A California rule of criminal procedure allowed the intermediate court of appeals to determine whether an indigent defendant should be assisted by counsel on his appeal by right.

<sup>80</sup> See *NAACP v. Button*, 371 U.S. 415, 445-46 (1963) (Douglas, J., concurring).

individual qualifications for a *pro hac vice* admission. Although close association with local counsel would alleviate the problem to some extent, the civil rights attorney may be unable to find local counsel with whom to associate, especially in rural areas.

Counterbalancing the argument that out-of-state attorneys should be excluded for lack of knowledge is the recognized success such attorneys have had in Southern courts. The volunteers are specially trained for this work before they enter the South, and many of the volunteers are among the recognized intellectual leaders of the American bar. It is quite possible that the skill of the volunteers and their consequent success in the courts are the real motivating factors behind the current move to exclude them from practice.

Another justification for excluding the volunteers is that out-of-state attorneys are not as thoroughly regulated as members of the local bar. Although the volunteers will be subject to the courts' disciplinary powers, the day-to-day regulation of practice by local custom, enforced primarily by the need for a good professional reputation, is not as readily applicable to the transient as to the local practitioner who depends on his professional standing for his livelihood.

The state may also be legitimately concerned that attorneys will come into the state for a month or two, initiate a number of lawsuits and then exit, leaving the unfinished business to another lawyer who may be unavailable or unprepared. But, since the volunteer groups now have permanent offices and resident staff members in the South, there is some continuity of representation. Furthermore, membership in the bar of another state should provide strong evidence of professional integrity. The attorneys should be accorded the presumption that their conduct will comply with acceptable ethical standards.

#### F. *A Possible Judicial Solution*

A reasonable compromise between the state regulatory interest and the constitutional rights of litigants might be reached by limiting judicial discretion. The courts, of course, should have the power to deny *pro hac vice* admission to an attorney who is disreputable or incompetent. But if there is evidence that the litigant is unable to obtain local counsel, the court should be required to demonstrate that the attorney is not qualified. A rule that the court must state the reasons for a denial of *pro hac vice* admission would provide a check on arbitrary action and furnish the applicant with grounds upon which to base an appeal or a prayer for injunctive relief.

## III

## FEDERAL INJUNCTIVE RELIEF

Protracted litigation and appeal through the state court system, possibly with ultimate recourse to the United States Supreme Court, is an unsatisfactory way for an attorney to protect the constitutional rights of all the parties involved in an unauthorized practice case. During the entire course of such a proceeding, the attorney involved will be unable to practice law, and his clients may well go without representation. Effective relief must be swift. The most effective form of relief is a federal court order enjoining the unlawful infringement of constitutional rights.

A. *Federal Jurisdiction*

The Civil Rights Act of 1871 provides a cause of action at law or in equity against anyone who, under color of state law, "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. . . ."<sup>81</sup> The Judiciary Act endows the federal courts with original jurisdiction in such cases.<sup>82</sup>

Jurisdiction has never been successfully invoked under these statutes in cases alleging deprivation of the right to practice law,<sup>83</sup> since the Constitution does not protect that right.<sup>84</sup> When civil rights volunteers are prevented from practicing in the South, however, the issue is much broader than a mere denial of the right to practice law. Official actions in Alabama, Louisiana, and Mississippi constitute serious infringements of rights secured by the first and sixth amendments and the privileges and immunities, due process, and equal protection clauses of the Constitution. The federal courts clearly have

<sup>81</sup> REV. STAT. § 1979 (1875), 42 U.S.C. § 1983 (1964).

<sup>82</sup> 28 U.S.C. § 1343 (1964) (jurisdiction over any action brought "to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights . . .").

<sup>83</sup> For cases refusing to invoke the jurisdiction, see *Mitchell v. Greenough*, 100 F.2d 184 (9th Cir. 1938), *cert. denied*, 306 U.S. 659 (1939); *Nicklaus v. Simmons*, 196 F. Supp. 691 (D. Neb. 1961); *Emmons v. Smitt*, 58 F. Supp. 869 (E.D. Mich. 1944), *aff'd*, 149 F.2d 869 (6th Cir.), *cert. denied*, 326 U.S. 746 (1945).

<sup>84</sup> *In re Lockwood*, 154 U.S. 116 (1893); *Bradwell v. State*, 83 U.S. (16 Wall.) 130 (1872). The federal courts may not require the state to grant a license to practice, *Keeley v. Evans*, 271 F. 520 (D. Ore.), *appeal dismissed*, 257 U.S. 667 (1921), and lower federal courts have no jurisdiction over state disciplinary proceedings. *Green v. Elbert*, 63 F. 308 (8th Cir. 1894). (The holding in *Green* was qualified because the plaintiff's right to practice in federal courts was not affected by the state disbarment.)

jurisdiction over actions brought to enforce and defend these basic freedoms.<sup>85</sup>

Federal jurisdiction under the Civil Rights Act is not dependent on the lack of available state relief,<sup>86</sup> and relief under state law need not be sought first.<sup>87</sup> Alleging facts that constitute a deprivation of constitutional rights under color of state law is sufficient to state a cause of action.<sup>88</sup> Jurisdiction is not dependent on the amount in controversy,<sup>89</sup> since the rights protected are "inherently incapable of pecuniary valuation."<sup>90</sup>

### B. "Equitable Jurisdiction"

Although the Civil Rights Act of 1871 empowers the federal courts to entertain a suit in equity, "the statute does not extend the sphere of equitable jurisdiction in respect of what shall be held an appropriate subject matter for that kind of relief."<sup>91</sup> The traditional rules of equity which must therefore apply relate not to "jurisdiction" in the sense of the power to hear and determine a case, but to the propriety of granting equitable relief in a case over which the court has jurisdiction.<sup>92</sup>

The traditional prerequisite to granting equitable relief is the inadequacy of a remedy at law. The doctrine requires that, to deprive the court of equity jurisdiction, the remedy at law "must be as complete, practical and efficient as that which equity could afford."<sup>93</sup> Arguably, one seeking to enjoin a state criminal prosecution has an

<sup>85</sup> *Dombrowski v. Pfister*, 380 U.S. 479 (1965) (first amendment); *Ex parte Young*, 209 U.S. 123 (1908) (equal protection); *Murphy v. Love*, 249 F.2d 783 (10th Cir. 1957), *cert. denied*, 355 U.S. 958 (1958) (due process); *Livingston v. McLeod*, 209 F. Supp. 605 (S.D.N.Y. 1962) (due process); *New Am. Library of World Lit., Inc. v. Allen*, 114 F. Supp. 823 (N.D. Ohio 1953) (due process); *Lawrence v. Hancock*, 76 F. Supp. 1004 (S.D.W. Va. 1948) (equal protection); *Sellers v. Johnson*, 69 F. Supp. 778 (S.D. Iowa 1946) (first amendment, due process, equal protection); *Proctor & Gamble Co. v. Coe*, 96 F.2d 518 (D.C. Cir.), *cert. denied*, 305 U.S. 604 (1938) (dictum); *Baltimore Transit Co. v. Flynn*, 50 F. Supp. 382 (D. Md. 1943) (dictum).

<sup>86</sup> *Monroe v. Pape*, 365 U.S. 167 (1961).

<sup>87</sup> *McNeese v. Board of Educ.*, 373 U.S. 668 (1963); *Florida Lime & Avacado Growers, Inc. v. Jacobsen*, 362 U.S. 73 (1960); *Jordan v. Hutcheson*, 323 F.2d 597 (4th Cir. 1963).

<sup>88</sup> *McNeese v. Board of Educ.*, 373 U.S. 668 (1963); *Florida Lime & Avacado Growers, Inc. v. Jacobsen*, 362 U.S. 73 (1960); *Jordan v. Hutcheson*, 323 F.2d 597 (4th Cir. 1963).

<sup>89</sup> *Douglas v. City of Jeannette*, 319 U.S. 157 (1943).

<sup>90</sup> *Hague v. CIO*, 307 U.S. 496, 530 (1939).

<sup>91</sup> *Giles v. Harris*, 189 U.S. 475, 486 (1903); *Wolfe v. City of Albany*, 189 F. Supp. 217 (D. Ga. 1960).

<sup>92</sup> *Giles v. Harris*, 189 U.S. 475 (1903); *Wolfe v. City of Albany*, 189 F. Supp. 217 (D. Ga. 1960).

<sup>93</sup> *Terrace v. Thompson*, 263 U.S. 197, 214 (1923).

adequate remedy at law, since he may assert both factual<sup>94</sup> and constitutional<sup>95</sup> defenses. In at least one situation, however, the legal remedy is inadequate despite the accused's ability to assert a constitutional defense. If first amendment rights are involved, prosecution itself is an impairment of those rights.<sup>96</sup> Thus, when a state prosecutes an attorney for unauthorized practice, the client's first amendment right to litigate may be infringed.<sup>97</sup> In such a case, the attorney may seek to enjoin his own prosecution by asserting the rights of his client,<sup>98</sup> or the client may assert his own rights to enjoin the prosecution of his attorney.<sup>99</sup>

In addition to first amendment rights, the client has other rights that may be infringed by prosecution of his attorney. The attorney's assertion of those rights in his own defense would not constitute an adequate legal remedy for the client, because the client would not be a party to the action. Since the client would have no other legal means to assert or defend his rights, federal injunctive relief should be available to him.<sup>100</sup>

### C. *Abstention and the Anti-Injunction Statute*

In the famous case of *Railroad Commission of Texas v. Pullman Co.*,<sup>101</sup> Justice Frankfurter, speaking for the Court, directed the fed-

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<sup>94</sup> In the *Sobol* case, for example, the plaintiff might, in the criminal prosecution, show factual compliance with state law. See note 103 *infra*.

<sup>95</sup> The ability to assert constitutional defenses at trial constitutes an adequate legal remedy. *Porto Rico Tel. Co. v. Puerto Rico Communications Auth.*, 189 F.2d 39 (1st Cir.), *cert. denied*, 342 U.S. 830 (1951).

<sup>96</sup> See *Dombrowski v. Pfister*, 380 U.S. 479 (1965), holding that, where state criminal statutes create a danger to free expression, the district court must enjoin state officials from enforcing the statutes. The Court reasoned that even a good-faith prosecution would have such a "chilling effect" on freedom of expression that only a federal injunction would effectively protect the rights of the accused. A fortiori, when a prosecution is brought not in good faith, but primarily to harass and intimidate the accused, the need for injunctive relief is clear. *Cox v. Louisiana*, 348 F.2d 750 (5th Cir. 1965).

<sup>97</sup> See pp. 124-25 *supra*.

<sup>98</sup> Cf. *Barrows v. Jackson*, 346 U.S. 249 (1953). The Supreme Court held that a state court's action in enforcing a racially restrictive covenant violated the equal protection clause of the fourteenth amendment. Defendants in the suit were whites who had agreed to sell to Negroes in violation of the covenant. They were allowed to assert the rights of the Negro purchasers in defense. See also *Lamont v. Postmaster General*, 381 U.S. 301 (1965).

<sup>99</sup> In *Sobol v. Perez*, Civil No. 67-243 (E.D. La., filed Feb. 27, 1967), two clients joined with attorney Sobol seeking to enjoin the threatened prosecution.

<sup>100</sup> See *Township of Hillsborough v. Cromwell*, 326 U.S. 620 (1946), where the Court said that a district court may enjoin a state court proceeding that cannot adequately protect the petitioner's constitutional rights.

<sup>101</sup> 312 U.S. 496 (1941). See also *Harrison v. NAACP*, 360 U.S. 167, 176 (1959); *AFL v. Watson*, 327 U.S. 582, 595-96 (1946).

eral judiciary to avoid "needless friction with state policies"<sup>102</sup> by refusing to hear cases which could be decided under state law. If the "Pullman doctrine" were applied to the *Sobol* case, for example, the district court might deny the injunction on the grounds that the case could be resolved by a finding that Sobol had complied with state law.<sup>103</sup> The doctrine, however, is inapplicable when a plaintiff alleges grave and irreparable injury to constitutionally protected rights.<sup>104</sup>

*Dombrowski v. Pfister*<sup>105</sup> clearly indicates that criminal prosecutions that threaten first amendment rights constitute grave and irreparable injury, and the opinion suggests that the district court has no discretion to deny an injunction in such a case. The Fifth Circuit has even more clearly narrowed the trial court's discretion. In *Cox v. Louisiana*,<sup>106</sup> the court acknowledged the general validity of the abstention doctrine, but said:

When a State, under the pretext of preserving law and order uses local laws, valid on their face, to harass and punish citizens for the exercise of their constitutional rights or federally protected statutory rights, the general principle must yield to the exception . . . .<sup>107</sup>

Similarly, in *Woods v. Wright*,<sup>108</sup> the court stated that "[w]here there is a clear and imminent threat of an irreparable injury amounting to manifest oppression *it is the duty of the court to protect against the loss of the asserted right . . . .*"<sup>109</sup>

The philosophy of the abstention doctrine is embodied in a federal anti-injunction statute which provides:

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.<sup>110</sup>

Since the statute does not apply until proceedings are actually pending in the state court, it does not bar relief where, as in the *Sobol* case,

<sup>102</sup> 312 U.S. at 500.

<sup>103</sup> Sobol alleges that he practiced in association with the New Orleans firm of Collins, Douglas & Elie. Louisiana law permits an out-of-state attorney to practice in association with local counsel, but "association" is not defined. LA. REV. STAT. ANN. § 37-214 (1964). A finding that Sobol had "associated" with local counsel would remove the need for decision of the constitutional issues.

<sup>104</sup> *Browder v. Gale*, 142 F. Supp. 707 (M.D. Ala.) (three-judge panel), *aff'd per curiam*, 352 U.S. 903 (1956). See also *Morrison v. Davis*, 252 F.2d 102 (5th Cir. 1958).

<sup>105</sup> 380 U.S. 479 (1965).

<sup>106</sup> 348 F.2d 750 (5th Cir. 1965).

<sup>107</sup> *Id.* at 752.

<sup>108</sup> 334 F.2d 369 (5th Cir. 1964).

<sup>109</sup> *Id.* at 375 (emphasis added).

<sup>110</sup> Act of June 25, 1948, 28 U.S.C. § 2283 (1964).

the injunction is requested prior to the filing of an information.<sup>111</sup> Once a criminal prosecution is pending, however, an injunction can issue only if the case comes under one of the exceptions.

Arguably, Section 1983 of the Civil Rights Act of 1871, providing for "an action at law [or a] *suit in equity*,"<sup>112</sup> expressly authorizes such relief. The courts, however, are divided on the effect of the section,<sup>113</sup> the most recent case holding that the section is not a statutory exception.<sup>114</sup> The Supreme Court has reserved decision on the issue.<sup>115</sup>

It is reasonable to interpret section 1983 as an express statutory authorization of injunctions. The contrary interpretation would imply that Congress intended the federal courts to have equity powers in civil rights cases but deprived them of the most effective tool of equity, the injunction. Furthermore, such an interpretation would condition the availability of injunctive relief on the outcome of a race between the prosecutor and the accused. The realities of the situation should overcome such nice distinctions.

Even if section 1983 is not an express exception to the anti-injunction statute, injunctive relief may be awarded on the theory that the statute merely codifies the abstention doctrine and is therefore subject to the irreparable injury exception. In *Baines v. City of Danville*,<sup>116</sup> which held that section 1983 was not an express exception, the court said:

Since the statute was fathered by the principles of comity, it has been held that the statute should be read in the light of those principles and, though absolute in its terms, is inapplicable in extraordinary cases in which an injunction against state court proceedings is the only means of avoiding grave and irreparable injury. . . . [W]e have certainly been told by the Supreme Court that in those circumstances it may be disregarded, for its parentage discloses that it was not intended to be as absolute as it sounds.<sup>117</sup>

When state action preventing nonresident attorneys from practicing works a denial of the Negro's first amendment right to litigate, the *Dombrowski* principle clearly justifies a federal injunction against state officials.

<sup>111</sup> *Dombrowski v. Pfister*, 380 U.S. 479 (1965).

<sup>112</sup> REV. STAT. § 1979 (1875), 42 U.S.C. § 1983 (1964) (emphasis added).

<sup>113</sup> Compare *Baines v. City of Danville*, 337 F.2d 579 (4th Cir. 1964), cert. denied, 381 U.S. 939 (1965) (§ 1983 held not a statutory exception), with *Cooper v. Hutchinson*, 184 F.2d 119, 124 (3d Cir. 1950) (§ 1983 held an exception).

<sup>114</sup> *Cameron v. Johnson*, 262 F. Supp. 873 (S.D. Miss. 1966) (three-judge panel).

<sup>115</sup> *Dombrowski v. Pfister*, 380 U.S. 479, 484 n.2 (1965).

<sup>116</sup> 337 F.2d 579 (4th Cir. 1964), cert. denied, 381 U.S. 939 (1965).

<sup>117</sup> *Id.* at 593.

## CONCLUSION

Richard B. Sobol's injunction suit in a federal district court will challenge the constitutionality of Louisiana's threatened prosecution for unauthorized practice. Of the several constitutional theories available to Sobol, the clearest and strongest is based on the violation of the first amendment rights of Southern Negroes that will result if he and others similarly situated are denied the right to practice law in the South.

In the past, Southern regulatory statutes attempting to thwart the civil rights movement by harassing its legal representatives have fallen before constitutional attacks in the Supreme Court. There is no reason to assume that the most recent method of harassment will be any more successful.

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