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96-8 CIVIL SUITS FOR VIOLATIONS OF CIVIL RIGHTS

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HEARING AND MARKUPS
BEFORE THE
SUBCOMMITTEE ON
JUDICARY, MANPOWER, AND EDUCATION
AND THE
COMMITTEE ON
THE DISTRICT OF COLUMBIA
HOUSE OF REPRESENTATIVES

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NINETY-SIXTH CONGRESS
FIRST SESSION
ON

H.R. 3343

TO PERMIT CERTAIN SUITS UNDER SECTION 1983, TITLE 42,
UNITED STATES CODE

JULY 19 AND OCTOBER 24, 1979

Serial No. 96-8

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(II)

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HEARING AND MARKUP ON H.R. 3343

THURSDAY, JULY 19, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON JUDICIARY, MANPOWER, AND EDUCATION,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m. in room 1310 Longworth House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Mazzoli, Barnes, and McKinney.

Also present: John D. Cooper, subcommittee counsel; Elizabeth D. Lunsford, General Counsel; James T. Clark, legislative counsel; Jack Barthwell, staff counsel; Don Davis, staff assistant; Harry M. Singleton, minority chief counsel; and Alfred S. Frank, Jr., staff assistant.

STATEMENT OF REPRESENTATIVE MAZZOLI

Mr. MAZZOLI. The subcommittee will come to order.

I have a short opening statement which I will extend and ask the Reporter to include as part of the record. Basically, my statement is to welcome my friend and congressional classmate, Stewart McKinney, as our first witness. I want to thank him for having again introduced this bill. It had my support when he introduced it in the last Congress and has it again this time. I believe it will be a worthy addition to the statutes of the country.

Let me go on to say very briefly that it appears from our study that the District of Columbia appears to be the only area in the Nation in which citizens would not have the opportunities of using section 1983 where their civil rights have been abridged by local government. And it seems that if it is fair for the residents of the State of Connecticut or the State of Kentucky, it would seem to be, and I do not think it is too simplistic to say, fair for the residents of the District of Columbia.

So, my statement is to that effect and without further adue, I would welcome my friend, Stewart McKinney, our ranking member of the full committee to testify in any way he wishes on this bill.

[The prepared statement of Congressman Mazzoli follows:]

OPENING STATEMENT OF ROMANO L. MAZZOLI, CHAIRMAN, SUBCOMMITTEE ON
JUDICIARY, MANPOWER AND EDUCATION

In opening this hearing on H.R. 3343, let me thank the witnesses who have taken time out of their busy schedules to appear before the subcommittee to give valuable testimony concerning this bill. Let me also thank my colleague, rep-

representative McKinney of Connecticut, the district committee's ranking minority member, for introducing this important legislation. I am proud to serve on the D.C. committee with my friend and congressional classmate, Stewart McKinney.

As the District of Columbia makes greater and increasing strides toward the full realization of home rule, a number of problems and inconsistencies, owing to its prior status, continue to emerge. H.R. 3343 addresses one of these problems.

Under current law, section 1983 of title 42 U.S. Code provides the basic remedy for civil suits against persons, states or territories who abridge the constitutional freedoms of others while acting under color of law.

The present construction of section 1983 makes no mention of the District of Columbia in conjunction with the use of the terms "person, state or territory." The effect of this omission is to exclude citizens of the District of Columbia from the remedies provided by section 1983.

In a decision handed down in 1973, the U.S. Supreme Court, in *District of Columbia v. Carter*, held that the District of Columbia was not a state or territory for the purposes of section 1983.

Thus, in this landmark case, a citizen of the District of Columbia, whose rights had been infringed upon by persons acting under the color of local law, was found to have no legal right to redress a grievance under section 1983 of the U.S. code. This fundamental right is secured for every citizen of every State of the Union, but not for citizens of the Nation's Capital.

In a more recent decision *Monell v. The City of New York* (1978), the court extended the protection of section 1983 to residents of all municipalities—but again, citizens of the District of Columbia were excluded from that decision.

So the final result is that anyone, whether a District resident or visitor to the capital, who feels that his or her constitutional rights have been denied by the government of the District of Columbia, is without this effective remedy. This result is clearly unacceptable.

My examination of the legislative history of section 1983 states that that act was designed as a remedy for actions and circumstances peculiar to that period (1871) of the nineteenth century in which the act was given life. Given this background, it is understandable that federal lawmakers could not have anticipated the advent of home rule in the District of Columbia, and, therefore, had no reason to include the District of Columbia under the provisions of section 1983. H.R. 3343 is designed to correct this oversight and to extend the guarantees of section 1983 to residents of the District of Columbia.

Today's bill also amends section 1323 of 28 U.S. code, which gives the federal district courts exclusive jurisdiction of section 1983 cases, to include cases brought against the District of Columbia government.

The citizens of the District of Columbia, like the citizens of all the States of the Union, should not have to rely upon local courts for adjudication of their Constitutional grievances against local authorities.

H.R. 3343 is, in truth, little more than a technical amendment of federal law. However, at stake is more than a technicality. H.R. 3343 insures basic legal guarantees and protections, now enjoyed by every American except those living in the District of Columbia, to District residents.

Mr. MAZZOLI. H.R. 3343, introduced by Mr. McKinney (for himself and Messrs. Edwards of California, Dellums, Mazzoli, Diggs, Fauntroy, and Marks), on March 29, 1979, together with staff summary and relevant provisions of the United States Code, follow:

H.R. 3343, 96TH CONG. 1ST SESS.

A BILL To permit civil suits under section 1979 of the Revised Statutes (42 U.S.C. 1983) against any person acting under color of any law or custom of the District of Columbia who subjects any person within the jurisdiction of the District of Columbia to the deprivation of any right, privilege, or immunity secured by the Constitution and laws

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) is amended—

(1) by inserting "or the District of Columbia" after "any State or Territory"; and

(2) by adding at the end thereof the following new sentence: "For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

SEC. 2. Section 1343 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "The district courts"; and

(2) by adding at the end thereof the following new subsection:

"(b) For purposes of this section—

"(1) the District of Columbia shall be considered to be a State; and

"(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

SEC. 3. The amendments made by this Act shall apply with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after the date of the enactment of this Act.

H.R. 3343

STAFF SUMMARY OF BILL

Section 1983 of Title 42 U.S.C. provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

H.R. 3343 will amend this section by adding the words, "or the District of Columbia" immediately after the words, "any State or Territory" as they appear in the statute.

The bill will also amend section 1343 (3) of Title 28 which gives the federal district courts jurisdiction of section 1983 actions. This conforming amendment expands district court jurisdiction to include actions brought against the District of Columbia government.

HISTORY AND PURPOSE

Section 1983 is the basic remedy for violations of civil rights by local government authority. Working with section 1343 it provides a right of action in federal court against persons who, acting under color of local law or custom, deprive someone of Constitutional or statutory rights.

Common example of section 1983 actions involve police brutality and discrimination in government hiring or job promotion. A recent Supreme Court case however, *District of Columbia v Carter*, held that the District of Columbia was not a, "person, State or Territory" for purposes of section 1983, and that no suits could be brought under that section against the District government. Since the court has held in other cases that municipal governments are liable for their actions under section 1983, the *Carter* case means that the District of Columbia is virtually the only American locality not subject to the civil rights statute. District residents may still pursue actions under the D.C. Human Rights law, Title VII of the Civil Rights Act, or in common law civil suits, as all other citizens, but these types of action have serious limitations on their effectiveness in civil rights enforcement.

The most important problem stemming from the *Carter* decision is that it denies District residents and other citizens aggrieved by D.C. government action, the use of the federal courts as a neutral forum. Citizens who sue their legal governing body should not be forced to resort to a local court system to be heard.

H.R. 3343 will open the avenue of a federal remedy, and put District residents on an equal footing with the citizens of all other jurisdictions.

42 UNITED STATES CODE SECTION 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 UNITED STATES CODE SECTION 1343

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or all persons within the jurisdiction of the United States.

(4) To recover damages or to secure equitable or other relief under the Act of Congress providing for the protection of civil rights, including the right to vote.

Mr. MAZZOLI. Also, at this point without objection we will include the report of Chairman Arrington Dixon on H.R. 3343.

[The report referred to follows:]

COUNCIL OF THE DISTRICT OF COLUMBIA,
Washington, D.C., July 20, 1979.

HON. ROMANO L. MAZZOLI,

Chairman, Subcommittee on Judiciary, Manpower and Education, U.S. House of Representatives, Committee on the District of Columbia, Washington, D.C.

DEAR MR. MAZZOLI: Thank you for the opportunity to comment on H.R. 3343 which would permit District of Columbia citizens to bring civil rights suits under 42 U.S.C. § 1983. As Chairman of the Council of the District of Columbia, I wholeheartedly support this measure and urge your Subcommittee to take prompt and favorable action to ensure that citizens of the District of Columbia have the same right of access to federal courts as is afforded every other citizen of the United States.

As you are aware, this legislation is necessary because the Supreme Court has determined that the District of Columbia is not a state or territory within the meaning of 42 U.S.C. § 1983. The Court's determination is based on the District's unique status as the seat of the national government. The Court indicated that in certain respects, the District does not compare to a state or territory: it is the very heart of the Union, the permanent abiding place of the government's supreme departments, and the place within which the immense governmental powers are to be exercised. (*See District of Columbia v. Carter*, 409 U.S. 418, 432 (1973).)

It is unfortunate that at the very heart of the Union, citizens are not accorded the same right of redress for violations of their fundamental civil rights as are afforded every citizen of every state and territory of the United States. Likewise, it is unfortunate that District officials acting under color of District law are not liable for their actions to the same degree as officials of the various states and territories of the United States.

We at the Council, along with District and federal officials, Members of Congress, and others, recognize the District's unique status, yet we share a commitment to eliminate all the vestiges of the past's less than full citizenship for District citizens. This legislation is a crucial step toward our common goal, for it is essential that every citizen, regardless of place of residence, has the right of seeking redress for violations of his fundamental civil rights under color of state, territory, or District law. Until District citizens have the right of redress afforded under 42 U.S.C. § 1983, and until District officials have a duty to act in accordance with that right, citizens of the District of Columbia will have less than full United States citizenship.

Since 1973, when the Supreme Court decided *Carter*, many of the disparities between citizens of the District and citizens of the states and territories have been eliminated; however, this legislation dealing with individuals' fundamental civil rights is long overdue. I commend your subcommittee for recognizing the important issues at stake for District citizens and for taking the action you are now taking.

Thank you again for the opportunity of making these comments. I am confident that all of my colleagues on the Council of the District of Columbia want to go on record with me in supporting this important measure.

Sincerely yours,

ARRINGTON DIXON,
Chairman.

STATEMENT OF REPRESENTATIVE McKINNEY

Mr. McKINNEY. I appreciate the chairman's support of this bill, and I am delighted that the bill is within the jurisdiction of this committee. I think that we may be able to pass this legislation and redress what I consider to be one of a long list of problems.

Mr. Chairman and members of the Subcommittee on Judiciary, Manpower, and Education, I am pleased to appear before you this morning to discuss an issue of the utmost importance to the citizens of the District of Columbia. Although the residents of the District of Columbia are citizens of the United States, they share very few of the benefits associated with that status.

District of Columbia residents pay Federal income taxes, serve our Nation in time of war, and are bound by Federal law just like every other citizen of the United States. Yet, citizens of the District of Columbia have no vote in either House of Congress which made the decisions that affect their very lives. As recently witnessed on the floor of the House on Tuesday when the District of Columbia budget matter was being considered, District of Columbia citizens cannot even decide how the moneys that they contribute through their taxes can be spent. However, the injustices done to the citizens of the District of Columbia do not end there.

As further example of the second class citizenship that District of Columbia citizens suffer, we are about to investigate, and I trust to correct, the denial of the application of one of the most basic civil rights statutes to these citizens. I might add, parenthetically, here that this injustice is suffered not only by the citizens of the District of Columbia but anyone whose civil rights have been violated by someone acting under the color of the District of Columbia law who may wish to sue the District of Columbia for violation of their civil rights.

PURPOSE OF H.R. 3343

As an American citizen and a member of the legislative branch of our Federal Government, I have got to admit, Mr. Chairman, I am ashamed of the second-class citizenship that has been imposed upon the citizens of the District. In an effort to erase the injustices of the past and bring down yet another barrier along the road to full citizenship for the citizens of the District, I have introduced H.R. 3343 to amend the applicable section of the United States Code to permit the citizens of the District of Columbia to sue in Federal courts for violations of their civil rights.

Title 42, section 1983 of the United States Code, permits citizens of the United States to bring suit in Federal district court against individuals who, while acting under the color of law of any State or territory, deprive them of their rights under the Constitution. Although it would appear reasonable to assume that this fairly basic statute would apply to the District of Columbia, the Supreme Court has ruled on the question and has instructed us that it does not. Since the District of Columbia is not a State nor a territory, this protection afforded every other U.S. citizen by section 1983 does not apply to the taxpaying citizens of the District.

We must act now to end this particular injustice and all the others as well which have been imposed upon the citizens of the District merely because they happen to live within the jurisdictional boundaries of the Federal District. Until such time as the Congress in its infinite wisdom sees fit to turn the situation around for the citizens of the District of Columbia, I fear that we as the champions of world democracy and the protectors of human rights everywhere are merely perpetuating a fraud upon ourselves.

Mr. Chairman and members of the subcommittee, it is my hope that you will act favorably and expeditiously in moving this matter to full committee. I look forward to this matter reaching the full committee level where I intend to support it vigorously and to, hopefully, shepherd it to the floor for an early vote and an early passage.

Thank you for the opportunity to testify.

Mr. MAZZOLI. I thank the gentleman from Connecticut, the ranking minority member of our committee, for a very strong statement, and one in which I join wholeheartedly, on behalf of his bill today. And I would like also just to amplify the record momentarily to suggest that this past week or 10 days has been very important to the District of Columbia. The gentleman from Connecticut was floor manager of the bill which provides additional funding for Metro. The gentleman also was active with regard to the budget, to try to get reasonable degree of support for the community. So, I think today's effort is simply another step in that progress.

I would also mention to my friend from Connecticut that this morning I heard on the radio that the State of California has taken another step which I hope will lead to the eventual ratification of the District of Columbia voting rights amendment, which seems to me now an equitable but important measure for the community. I wonder if the gentleman might just give me his observations on whether there is sort of a connection here between the Voting Rights Act and his bill in that it provides equal treatment for residents for the District of Columbia with other residents of other States.

Mr. McKINNEY. I think the chairman is absolutely right. This is just another in a long line of instances in which the people of the District of Columbia are disenfranchised. I am sure in this case, it was a legislative oversight when section 1983 was originally designed. But I think that is one of the problems. I think that the District has become "a legislative oversight" until it becomes time to kick it around gently on some other national tirade where there is no one that can vote against you.

It is a wonderful thing we do on the floor; let's bop the District and you cannot lose a vote.

I think everyone backing the voting rights bill knows I am willing to go anywhere I am asked to go. But I find myself embarrassed—I think that is a safe word—by the annual actions of the House on the District's budget, and I guess that embarrassment will last until we get out of the District's affairs.

Mr. MAZZOLI. I think that the gentleman has made a great contribution in his years on this committee and in the several years in which he has been a ranking member. I would suggest that when this bill gets to the full committee, that we act expeditiously. I am hopeful that we

can actually mark it up this morning so that it will then be coming before our full committee in due course.

I thank the gentleman from Connecticut and I appreciate his testimony on the floor today.

Mr. McKINNEY. I appreciate the chairman hearing me.

Mr. MAZZOLI. Thank you. The Chair would now invite forward the Honorable Theodore Newman, Chief Judge of the District of Columbia Court of Appeals.

I understand, Judge, that you lost a colleague and I appreciate particularly your taking the time to join us today.

**STATEMENT OF HON. THEODORE R. NEWMAN, JR., CHIEF JUDGE,
DISTRICT OF COLUMBIA, COURT OF APPEALS**

Judge NEWMAN. Thank you, Mr. Chairman.

You are correct. About 2 days ago, former Chief Judge Andrew Hood, who had been a member of the District of Columbia Court of Appeals since its founding in 1943, died. And I must proceed with dispatch to get to his funeral at 11 o'clock this morning.

Mr. MAZZOLI. You are certainly welcome, Your Honor, and we appreciate your attending.

Judge NEWMAN. I would like to just incorporate my written statement in the record with one correction. On the first line of the statement, it should not read, "*Clark v. District of Columbia*." It should read, "*Carter v. District of Columbia*."

MAZZOLI. Without objection then, with that correction your statement will be a part of the record.

Judge NEWMAN. Mr. Chairman, back in the 1870's when section 1983 of the United States Code was originally drafted, the jurisdiction to try any type of case of significance in the District of Columbia was vested in what evolved into the U.S. district court. As a consequence, any 1983 action that was brought could be brought in the District of Columbia because any action was brought in the U.S. district court. It was our local as well as our Federal court.

So, District of Columbia residents and, as the gentleman from Connecticut correctly points out and I want to emphasize, people from Kentucky, Connecticut, Missouri, or Montana who had their rights violated by people acting under the color of law of the District of Columbia while in the District could bring an action in the Federal court, that is, up until Court Reform and Criminal Procedure Act in 1970, which put the Federal courts out of the local business. The oversight was nobody looked and said, "That has an impact on section 1983, and let us do something about that," until now.

Any view that the judiciary of the District of Columbia would feel slighted, offended, denigrated by the citizens of the District of Columbia and other citizens from around the country who have their rights violated by color of law in the District of Columbia, that we would feel denigrated by access to an article III Federal forum, is just palpably not so.

NEED FOR H.R. 3343

Indeed, I note with interest that the Supreme Court of Michigan has held that section 1983 confers concurrent jurisdiction, both on the

Federal and State courts. And sooner or later, somebody is going to file a suit in Superior Court here contending jurisdiction under 1983 as well, and we are going to be in 1983 litigation in the local courts as well.

Mr. Chairman, the judiciary—and so far as I can speak for it and I think I can speak reasonably well for it—fully supports the objectives of this bill and urges its passage.

Mr. MAZZOLI. Thank you very much, Judge Newman. You have been a witness before this committee on many occasions, and I have always appreciated your testimony. You have always driven quickly to the main point and you have resisted what I guess is always a temptation that we have in public life to perhaps embellish the point. But your very brevity embellishes the point.

May I ask again if this is perhaps an oversimplification? If I understand your testimony, in a sense we are correcting a technicality. This is a very important and profound restoration of rights, but it is, in a sense, the correction of a technicality?

BACKGROUND OF THIS LEGISLATION

Judge NEWMAN. Until 1970, any citizen of the United States who had his rights violated by a person acting under color of District of Columbia law or color of District of Columbia authority could sue in the Federal courts in the District of Columbia. Until 1970, because they could go in under the local jurisdiction device.

And given the rationale of the Supreme Court of Michigan, what is conferred is concomitant jurisdiction on State and Federal courts. At least arguably, and I think vehemently arguably, you could bring in a 1983 action in the District court until 1970, when they were put out of the local business. Correctly put out of the local business I would urge. But what I am talking about now is not local business.

Mr. MAZZOLI. That is right. It is a constitutional matter.

Judge NEWMAN. That is right. And a lawyer ought to have the right, or a citizen ought to have the right, to decide whether he wants to litigate it in the Federal Article III Court or in the State court. Now, we have the same jury as the Federal courts do. We have a unified jury pool. We have got as good judges. I do not think we have any antipathy to the vindication of constitutional rights in the local court system. I am reasonably certain I can state that with assurance. But that is irrelevant.

The citizens ought to have the choice. There is nothing unique about the District of Columbia in this regard and you will hear me hollering that phrase until hell freezes over.

Mr. MAZZOLI. Well, I thank the gentleman very much. He serves with dignity on the Bench and he has been of great assistance to this committee on many occasions, not the least of which today. So, we thank you and wish you well in your endeavors.

Judge NEWMAN. Thank you, Mr. Chairman.

[The prepared statement of Chief Judge Newman, Chief Judge of the District of Columbia Court of Appeals, follows:]

PREPARED STATEMENT OF THE HONORABLE THEODORE R. NEWMAN, JR., CHIEF JUDGE
OF THE DISTRICT OF COLUMBIA COURT OF APPEALS, BEFORE THE HOUSE DISTRICT
COMMITTEE ON H.R. 3343

In *Carter v. District of Columbia*, 409 U.S. 418 (1973), the Supreme Court held that the District of Columbia was not a "state or territory" within the meaning of 42 U.S.C. 1983 and that accordingly, the federal district courts were without jurisdiction to entertain suits by citizens of the District against District officials based upon violations of rights guaranteed citizens of the District by the United States Constitution or federal law.

In its decision, the Court quite properly noted that when Congress enacted 42 U.S.C. 1983, it was concerned that state courts did not provide an adequate forum for the vindication of federally protected rights. However in 1871, and indeed until quite recently, federal courts in the District were courts of dual jurisdiction, with general jurisdiction over federal as well as local matters. Congress understood that a federal forum already existed for citizens of the District and to enact separate legislation comparable to section 1983 for the District's residents would have been superfluous.

BACKGROUND OF THE DISTRICT OF COLUMBIA

However, much has changed since the passage of section 1983 over 108 years ago. Indeed, it has been Congress that has spurred those changes. Congress has recognized that quite apart from being the seat of the national government, the District is a viable local community with problems and resources like other communities, across the nation, and that the citizens of the District should enjoy the same rights and privileges of other citizens. Let's briefly look at some recent developments. In 1970, Congress enacted the District of Columbia Court Reform and Criminal Procedure Act. Among other things, the Act established an independent court system with exclusive jurisdiction over local matters. In 1973, the Congress enacted legislation that provided for a charter that would establish an office of the Mayor and a City Council with executive and legislative authority, respectively, to govern the local affairs of the District. In the near future, the Congress is likely to consider legislation that would transfer the jurisdiction of the U.S. Attorneys over local crimes, to the Office of the Corporation Counsel. And, of course, there is now pending a Constitutional Amendment that would give the citizens of the District full voting representation in the Congress and the Senate.

H.R. 3343

This brief review of some of the significant pieces of legislation in which Congress has moved toward granting the citizens of the District those basic rights and privileges enjoyed by citizens of other states underscores the significance of H.R. 3343. The District is no longer the city viewed by the Congress in 1871. It is no longer a city where Congress must assume responsibility over every aspect of local matters. Thousands of city employees and officials have accepted the authority that Congress has delegated and the city functions as other communities all across the nation. It is for this reason that the premise behind the denial of access to a federal forum for the vindication of federally protected rights is no longer valid.

Fundamentally, the citizens of the District need the same level of access and same remedies available to citizens in other states. If I am correct, the District of Columbia is the only jurisdiction throughout the 50 states and Puerto Rico, where citizens are not guaranteed a federal forum to vindicate constitutionally protected rights. (The Supreme Court in *Examining Board v. Flores de Otero*, 96 S.Ct. 2264 1976) held that Puerto Rican officials are covered by section 1983 and may be sued under section 1983.

In my view, the passage of H.R. 3343 is wholly consistent with the progress Congress has made in guaranteeing the District's citizens the rights and privileges available to other citizens of the United States. It is eminently sound, equitable, and need I say, just.

Mr. MAZZOLI. For the purpose of completing our record, I would state that the Honorable H. Carl Moultrie, Chief Judge of the Superior Court of the District of Columbia was scheduled and did intend to appear before our committee in behalf of the measure. But

because of the funeral to which Judge Newman has alluded, Judge Moultrie will not be able to be with us. Without objection, his statement in support of the bill, H.R. 3343, will be made a part of the record.

[The prepared statement of the Honorable H. Carl Moultrie I, Chief Judge of the Superior Court of the District of Columbia, follows:]

PREPARED STATEMENT OF H. CARL MOULTRIE I, CHIEF JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BACKGROUND OF SECTION 1983

H.R. 3343, introduced in this session of Congress, is a bill to amend 42 U.S.C. section 1983, Section 1979 of the Revised Statutes. If enacted, citizens of the District of Columbia would be permitted to bring suit in federal district court for redress of violations of rights secured by the Constitution and laws of the United States. As presently drafted, only citizens of the states and territories may bring suit under the statute. An examination of the legislative history of the statute and its subsequent interpretation by the judiciary indicates the necessity of the amendment.

Section 1983, originally termed the Ku Kux Klan Act of 1871, was enacted shortly after the close of the Civil War in response to the reluctance of state governments to enforce state laws against persons violating the rights of Blacks and Union sympathizers; this reticence on the part of the states indicated the need for federal intervention to the Reconstruction era Congress, which chose original jurisdiction in the federal courts as a means of providing federal control over the unconstitutional actions of state officials.

It has been suggested that the jurisdictional aspects of the 1871 Act were "entirely superfluous" with regard to the District of Columbia, since the courts of the District had general jurisdiction over both federal and local matters. *District of Columbia v. Carter*, 409 U.S. 418 (1973). Additionally, Congress was authorized by Article I of the Constitution to exercise plenary power over the officials of the District, in marked contrast to its power over state officials.

BENEFITS OF SECTION 1983

However, the Act which is now known as Section 1983 is no longer used solely as a bastion against the atrocities of hooded Klansmen, nor is the District of Columbia merely a federal enclave. Rather, the statute provides a forum in federal court to the citizens of United States territories and the 50 states for the litigation of a variety of claims involving violations of civil rights. Moreover, pervasive Congressional oversight of the affairs of the District has yielded to the move toward increased self-governance. Although the Supreme Court held in the *Carter* case that the District of Columbia is not a "State or Territory" within the meaning of 42 U.S.C. section 1983, there are several compelling reasons which demonstrate the need for inclusion of District residents in the class of persons which may bring suit under the statute.

First, although the abuses and problems which originally led to the promulgation of section 1983 may today not be of concern, section 1983 still serves some very important purposes:

1. It exists as an alternative remedy, supplementing those of state courts, for vindication of constitutional rights.
2. It provides a means for private citizens to effectuate federal rights in federal courts.
3. Under certain circumstances, state law may be inadequate to protect a citizen from conduct violative of basic rights or unable to insure the protections and benefits of federal law. In these cases section 1983 makes it possible for a citizen to obtain relief in federal court.

The purposes served by section 1983 today are as relevant to the District of Columbia as they are to every state and territory of the United States. In recent years, section 1983 has been used to protect and effectuate a vast panoply of federal constitutional and statutory rights. The subject matter of section 1983 cases ranges from education and housing to labor relations and occupational safety to conduct of police and prison authorities. These issues are as important in the District of Columbia as they are in every state and territory.

Second, unlike the government structure which existed until just a few years ago, which was direct federal governance of this city, with the advent of Home Rule the District of Columbia government more and more resembles that of any state. For example, almost every government function, with the exception of education, is administered by officials appointed by the elected chief executive, the Mayor. The education system is administered by a superintendent of schools appointed by an elected Board of Education. Because of this government structure, District of Columbia officials are in a position to act under "color of District of Columbia law" in a manner which could deprive a citizen of federal constitutional or statutory rights. There is, therefore, because of this change in the manner in which the District of Columbia is governed, every reason to expand the coverage of section 1983 to include the District of Columbia.

Finally, as a practical matter, most section 1983 lawsuits are brought by citizens of a state against a government official of the same state. Under present law, unlike every other citizen of every other state or territory of the United States, the citizens of the District of Columbia lack this very important remedy for official conduct denying federal constitutional and statutory rights. The proposed amendment would correct this unfortunate and improper distinction between the District of Columbia and every state and territory of the United States.

It is for these reasons that the proposed amendment to section 1983, H.R. 3343, is proper and necessary. I support H.R. 3343 and urge favorable action on it.

Mr. MAZZOLI. With that, it is my pleasure to invite forward the Honorable Drew S. Days III, Assistant Attorney General, Civil Rights Division of the Department of Justice. If memory serves me correctly, the gentleman spoke before the Senate Judiciary Committee, Subcommittee on the Constitution, in favor of the provision that is before our committee today.

So, we welcome him and, of course, it was my pleasure to join him in this room just the day before yesterday on another matter of importance to the Nation. We welcome you, Mr. Days.

Mr. DAYS. Thank you, Mr. Chairman.

Mr. MAZZOLI. I might say also that your statement will be made a part of the record.

Mr. DAYS. Thank you very much.

STATEMENT OF HON. DREW S. DAYS III, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. DAYS. Mr. Chairman, members of the subcommittee, let me thank you for the invitation to express the Department of Justice's view on H.R. 3343. The chairman is correct in pointing out that I appeared on behalf of the administration to support certain provisions of S. 35, and one of the provisions that we supported was the extension of section 1983 provisions to the District of Columbia.

Mr. MAZZOLI. If I could interrupt you at that point, Mr. Days, you may not want to read your statement entirely. But without objection of the committee, I would like to make your statement, which appears on page 59 of the hearing on S. 35, to be made a part of our record in this case. Thank you. You may proceed.

Mr. DAYS. I have no objection to that and I think it will be very helpful.

Let me just ask that my entire testimony be put into the record and I will try to summarize the major points.

Of course, this legislation is designed to make applicable provisions of 1983 to the District of Columbia. Section 1983 is a very important provision of our Federal civil rights arsenal, if you will, and there

appears to be no rational basis for making a distinction between the District of Columbia and the rest of the Nation in providing this type of protection. In the *District of Columbia v. Carter* (409 U.S. 418), which was decided by the Supreme Court in 1973, Mr. Justice Brennan, writing for the court, indicated that the District of Columbia was not a State and, therefore, was not within the ambit of 1983 but pointed out that this was simply a matter of divining the intent of Congress when it enacted 1983 in 1871 and that it was within the power of Congress to make a correction insofar as that omission was concerned. I think it is important to point out that Mr. Justice Brennan was no opponent of broad expansion of 1983, and I think it is also important to recognize that until Mr. Justice Brennan questioned counsel during oral argument before the Supreme Court, it was everyone's assumption that 1983 applied to the District of Columbia. And I think it is fair to say that everyone sitting there was embarrassed by Mr. Justice Brennan's questions because it had not been debated all the way up through the lower courts as to whether 1983 was covered. There were other issues that counsel wanted resolved by the Supreme Court.

So, I think this is clearly a situation where the Supreme Court has recognized the equity and necessity for such an expansion but has left to the Congress the responsibility for taking that action.

As I pointed out in my testimony, given the expansion and the jurisdiction of the District of Columbia government it now is very much like other governments, States and localities, and therefore, there is a logic to making this type of expansion. And without the application of 1983 to the District of Columbia, it is not certain that citizens in the District of Columbia can look to the Federal courts with the same amount of certainty as citizens of other jurisdictions when they are seeking vindication of Federal rights. I make mention in my testimony of *Davis v. Passman* (No. 78-5072, June 5, 1979), the Supreme Court decision which extends the right of a person to rely upon certain amendments to the Constitution directly in order to get into Federal court. But the Supreme Court has used that technique only in fourth amendment cases and now in fifth amendment cases. And I think we cannot predict with any amount of security how far the Supreme Court will go in expanding that so-called Bivens Doctrine to the point of protecting rights in the same way that 1983 provides protection.

I pointed out the difficulty of the amount in controversy that has to be met, a requirement under section 1331, a jurisdictional statute. The reason why Congress amended 1331 insofar as suits against Federal offices were concerned was because the doctrine was all over the lot as to what would satisfy the requirement that the amount in controversy be in excess of \$10,000. Some judges said certain constitutional or civil rights were invaluable and therefore, had no value. Some judges held that all rights were priceless and therefore, one could attach any amount of value to it; it could be \$1 million. It was impossible to assess and therefore, it had to be more than \$10,000 in controversy. And then, there were the judges who acted in more Solomonian fashion and tried to cut and paste and make adjustments in order to meet what appeared to the equities of particular circumstances. But it was a pattern of jurisprudence that nobody was very proud of, and that is why the amendment, I think, was passed by the Congress.

In the District of Columbia, I think we are confronted with essentially the same problem. *Smith v. Washington* (59 3 F. 2d 1097; D.C. Cir. 1978), which I cite in my testimony, points up the insecurity on this particular issue. I would simply say in conclusion that the Justice Department believes that it is very appropriate to include the District of Columbia within the purview of 1983. It is something that makes sense not only from a logical and equity standpoint, but it makes good law. And we wholeheartedly support the effort of this subcommittee and the committee to achieve that amendment.

Mr. MAZZOLI. Mr. Days, thank you very much for the testimony. I appreciate your strong support and that of the Justice Department. Since this is strictly a matter that you would be dealing with and have dealt with, and it includes the defense of the civil rights of Americans all over the Nation, it seems again logical to me that you ought to have in your arsenal, in your quiver the opportunity of using section 1983, on behalf of a District of Columbia resident or, as Judge Newman noted, a visitor from anywhere else into the District, whose civil rights are abridged in some fashion.

So, it seems very logical. Of course the solution, a lot of times around here the more logical and more clear cut, it seems the more problems we have. But I do think the array of testimony we have had today and that which was presented in the Senate hearings should go far to allay any questions in our colleagues' minds.

Mr. DAYS. Let me make one other point, Mr. Chairman.

Mr. MAZZOLI. Certainly.

JUSTICE DEPARTMENT AND CIVIL RIGHTS

Mr. DAYS. And that is that I have always considered the jurisdiction of the Justice Department in the civil rights area to exist not in a vacuum but in the context of vigorous private enforcement of civil rights laws. The only place where that tandem enforcement of civil rights laws does not exist is in the District of Columbia. Everywhere else we can look to the private bar to deal with certain problems while we deal with others, or we can deal with them in conjunction with the private bar. So, the viable private enforcement mechanism is not present at this point in the District of Columbia, and I think that is another reason for the need for this type of change.

Mr. MAZZOLI. Counsel has suggested that I ask a few questions to complete our record in the event that we would be questioned ourselves by members of the committee. One question is, are there any other substitutes for the section 1983 grant of Federal jurisdiction such as *Bivens* type actions, title VII actions, or section 1331 actions? You have answered the section 1331 because that requires an amount in controversy which is very difficult. But as to *Bivens* and title VII, are they reasonable substitutes for the private kind of enforcement here?

Mr. DAYS. I do not think so. As I suggested, *Bivens* is in the process of, perhaps, evolution, but we do not know where that evolution is going to ultimately lead us. And I think to require the citizens of the District of Columbia to await a process that is a very long and arduous one is, in my estimation, unfair and somewhat cynical.

Insofar as title VII is concerned, it obviously has utility in employment discrimination cases, but it is a very narrow statute. Section 1983

is unique in its breadth, and I think that is why there really is not a substitute on the horizon to provide the protections that it provides.

POWERS OF FEDERAL JUDGES

Mr. MAZZOLI. A second question that we would appreciate your observations on, and that is, could you give the subcommittee some thoughts on the extent of the Federal judge's power by using the temporary restraining order in halting State actions under the color of law which infringe upon the civil rights of individuals? And does that give the judge strong authority which perhaps would not be available to him or her in these other possible type remedies?

Mr. DAYS. It is very hard to say with any amount of specificity unless I know the situation. But I think it fair to say that Federal judges have enormously broad equitable authority and since they are appointed for life, they tend to be less subject to passing pressures, if you will, than some State or local judges. This has certainly been the experience around the country. There is an amount of detachment that is very important to the vindication of these rights. And certainly, at least under Federal case law, judges are required not only to halt the offending condition but to take whatever steps are necessary to make certain that the offending condition does not recur. And I think to that extent, we are talking about a potential for institutional reform that may not be within the powers granted to local judges. I simply do not know.

Mr. MAZZOLI. I thank you. That is a very good answer.

COST OF LEGISLATION

Another area is, would there be any appreciable cost associated with the enactment of this bill with regard to the expansion of Federal jurisdiction?

Mr. DAYS. I would not think so.

Mr. MAZZOLI. I would not either as a matter of fact. That, then, completes our record and unless counsel has any questions, I think that certainly completes another area of our inquiry. We thank you very much, Mr. Days, for joining us.

Mr. DAYS. Thank you for inviting me, Mr. Mazzoli.

Mr. MAZZOLI. Thank you very much and good luck to you.

[The prepared statement of Assistant Attorney General Days, Civil Rights Division on H.R. 3343, and his statement on Senate bill 35, p. 59, follow:]

PREPARED STATEMENT OF DREW S. DAYS III, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, ON H.R. 3343

PURPOSE OF H.R. 3343

Mr. Chairman, Members of the Subcommittee, let me thank you for the invitation to express the Department of Justice's views on H.R. 3343. This bill would authorize civil suits pursuant to 42 U.S.C. 1983 and 28 U.S.C. 1343 against any person acting under color of any law or custom of the District of Columbia who subjects any person within the jurisdiction of the District of Columbia to the deprivation of any right, privilege or immunity secured by the Constitution and laws. As we understand it, the purpose of the bill is to extend the same protection of basic civil rights to persons within the jurisdiction of the District of Columbia as is currently enjoyed by persons within the jurisdiction of the states. The Department strongly supports this proposal.

PRESENT LAW

Section 1983 is the basic statutory cause of action by which federal constitutional rights may be vindicated against persons violating those rights under color of state or local law. Its jurisdictional counterpart, 28 U.S.C. 1343, provides a federal forum for suits brought under section 1983 without regard to the amount in controversy.

In its present form section 1983 permits suits against persons acting "under color of any statute, ordinance, regulation, custom, or usage of any State or Territory." In *District of Columbia v. Carter*, 409 U.S. 418 (1973), the Supreme Court held that the District of Columbia was not a "State" or "Territory" for purposes of section 1983. The Court's decision did not turn on any lack of Congressional power to subject the District or its officials to suits for deprivations of constitutional rights. Indeed, the Court acknowledged that under Article 1, section 8, Congress may "exercise plenary power over the District of Columbia and its officials." 418 U.S. at 429. Rather, the decision was based on the Court's understanding of the intent of Congress when it passed the Civil Rights Act of 1871, the predecessor to section 1983.

At that time, Congress was concerned with the unwillingness of the states to protect the rights of their citizens. At the same time, Congress recognized that it would be unable to exert any direct control, on a day-to-day basis, over the actions of state officials. The solution chosen was to involve the federal judiciary in the protection of these rights. However, with respect to officials of the District of Columbia, Congress determined that it was in a position to observe and supervise their activities. It therefore did not include District officials within the ambit of the 1871 Act.

There is no longer any justification for omitting persons acting under color of District of Columbia law from the coverage of section 1983. The District has been given a measure of self-government and its functions in relation to individual citizens are indistinguishable from the functions of other municipalities. Indeed, it has some of the powers of the states. Congress should require persons acting under color of District of Columbia law to be subject to the same liabilities, and should confer upon them the same immunities, as those acting under color of state law.

PROBLEM WITH CURRENT LAW

Under current law, however, plaintiffs suing persons acting under color of District of Columbia law may face significantly greater obstacles than they would encounter in a suit against persons acting under color of state law. For example, without the benefit of section 1983, individuals suing officials of the Districts of Columbia for violations of constitutional rights must rely on the courts to imply a right of action directly from the Constitution. While courts have been willing to imply such causes of action against District officials in some situations, the Supreme Court's recent decision in *Davis v. Passman*, No. 78-5072 (June 5, 1979) leaves unclear whether relief will always be available to the same extent as it would be in suits brought under section 1983.

A second problem for plaintiffs suing District officials is the jurisdictional amount requirement in 28 U.S.C. 1331. Until recently, section 1331 required plaintiffs to establish an amount in controversy exceeding \$10,000 in all "federal question" cases not covered by a special grant of jurisdiction such as 28 U.S.C. 1343. This is not always an easy task in cases involving "priceless" personal rights that are nonetheless difficult to place a monetary value on. Although Congress recently amended 28 U.S.C. 1331 to remove the jurisdictional amount requirement in cases against federal officials, it is not clear whether District officials are covered by the amendment.¹ See *Smith v. Washington*, 593 F.2d 1097 (D.C. Cir. 1978). If suits against District officials do not fall within the amendment to section 1331, plaintiffs suing District officials would be required to establish a minimum amount in controversy to obtain a federal forum for redressing violations of constitutional rights, whereas those suing state or federal officials would not. H.R. 3343 would eliminate this anomaly.

¹ The Department of Justice has endorsed complete abolition of the jurisdictional requirement in 28 U.S.C. 1331. See the statement of Assistant Attorney General Daniel J. Meador in support of H.R. 2202 before the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, March 8, 1979.

CONCLUSION

The Department believes that it is appropriate to put those persons within the jurisdiction of the District on an equal footing with persons within the jurisdiction of the states by securing for them the same protection of basic rights. Since H.R. 3343 would accomplish this end, it is our hope that the Subcommittee will act favorably on it.

STATEMENT OF MR. DREW S. DAYS, III, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION ON "CIVIL RIGHTS IMPROVEMENTS ACT OF 1977", HEARINGS BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION OF THE COMMITTEE ON THE JUDICIARY U.S. SENATE

Mr. Days * * * The two most important changes in section 1983 law made by S. 35 are the imposition of liability on units of government and the inclusion of the District of Columbia and its officers in the statute. These changes would overturn court decisions interpreting section 1983 and would constitute a constructive exercise of Congressional power and prerogatives. The Department strongly recommends both these changes.

1. ADDITION OF THE DISTRICT OF COLUMBIA TO SECTION 1983

There is no longer any justification for omitting the District of Columbia and its officers from the coverage of section 1983. See, *Carter v. District of Columbia*, 409 U.S. 418 (1973). The District has been given a measure of self-government and its functions in relation to individual citizens are indistinguishable from the functions of other municipalities. Indeed, it has some of the powers of states. Congress should require the District and its officers to be subject to the same liabilities, and should confer upon them the same immunities, as states and state subdivisions. The Department, therefore, supports section 2(b) which would effect this change.

2. LIABILITY OF STATE AND LOCAL GOVERNMENTS AND AGENCIES

The Department agrees that present law should be changed to make state and local governmental units liable for violations of section 1983. Section 1983 now provides only for the liability of "persons." The Supreme Court has held that Congress, when it enacted section 1983, did not intend the word "person" to include governmental units. *Monroe v. Pape*, 365 U.S. 167 (1961); *City of Kenosha v. Bruno*, 412 U.S. 507 (1973); *Moor v. County of Alameda*, 411 U.S. 693 (1972). In these instances, the reach of section 1983 has been determined by statutory construction, and not by consideration of Congress' power to enforce the Fourteenth Amendment. Congress' power to regulate state activity by exercising Article I powers may be limited by considerations of state sovereignty. See, *National League of Cities v. Usery*, 426 U.S. 833 (1976). But under section 5 of the Fourteenth Amendment, Congress has much greater power over state activities, and may provide for state and local governmental liability in federal court to enforce the protections of that Amendment, *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976).

Absent further clarification, section 2(b) could be read to extend the liability of governmental entities to all federal wrongs committed by their agents acting in an official capacity. While Congress might, relying upon the full reach of its powers under the Fourteenth Amendment, achieve such an extension, S. 35 opts against this broad reading. Instead, under section 2(c) (1), liability in damages is generally limited to circumstances where injury can reasonably be said to have resulted from action taken pursuant to government directive or from a failure of governmental entities to take preventive measures. Courts and commentators have often noted the negative impact that the absence of a "deep pocket" in section 1983 litigation has upon the vindication of civil rights. Wronged individuals are relegated, consequently, to suing governmental officials who, even if held liable, are found to be judgment proof. *Lankford v. Gelston*, 364 F.2d 197, 202 (4th Cir. 1966); *Kates & Kuba, Liability of Public Entities Under Section 1983 of the Civil Rights Act*, 45 S.Cal.Law Rev., 131, 136-137, 157 (1972).

Section 2(c) (1) (D) does, however, render governmental entities liable in damages where injuries have been caused by one or more of their agents who cannot be identified despite reasonable efforts to do so. Officials are often difficult to identify because governmental entities have decided that their ano-

nymity is necessary to serve important public policies; for example, effective undercover police work requires officers to dress in plain clothes. In other instances, governmental entities act in ways that appear to ignore the need of citizens to be able to identify public officials; for example, issuing police badges with names or numbers too small or inconspicuous to read at a glance or which can be removed at will to avoid identification. Moreover, the government entity is in a far better position than the victim to find the offending party. In view of these considerations, it seems appropriate that liability and damages should attach here as well.

MR. MAZZOLI. We now have the Honorable David Clarke. He has just joined us and we would call him forward and also, Ms. Rogers from District of Columbia Corporation Counsel's Office.

Without objection, the statement of Ms. Rogers', who we had hoped would sit as a panel with Mr. Clarke, will be made a part of our record.

[The prepared statement of Ms. Judith Rogers, Corporation Counsel, District of Columbia, follows her subsequent testimony, at p. 31 hereof:]

MR. MAZZOLI. Mr. Clarke, we are pleased to have you. You have been, as I mentioned to Judge Newman before you came, a valuable help to this committee in many instances over the years in your testimony. We welcome you again today, and I might say that your statement with respect to the bill will be made a part of the record.

STATEMENT OF DAVID A. CLARKE, CHAIRPERSON, COMMITTEE ON JUDICIARY, GOVERNMENT OF THE DISTRICT OF COLUMBIA

MR. CLARKE. Thank you, sir. I will just briefly go through it.

I am pleased to have the opportunity to testify before this subcommittee on a matter of importance to the District of Columbia, the right of District residents to bring suits in Federal courts for violations of their civil rights. The proposed legislation, H.R. 3343, addresses an anomaly in the current Federal law, presenting a peculiarly Federal question which impacts upon the District of Columbia.

I commend the subcommittee for its decision to deliberate upon and resolve this important issue of Federal rights.

BACKGROUND OF SECTION 1983

Under the current Federal law, 42 U.S.C., section 1983, residents of the States are afforded an important remedy for violation of their constitutional rights at the hands of persons acting under color of State or local law or custom. Consequently, officials of State and local governments are held accountable for respecting and preserving the Federal, constitutional rights of their local constituency. I submit that District residents should have no fewer remedies for the vindication of their constitutional rights than those enjoyed by residents of the States and that officials and agents of the District of Columbia should be held no less accountable to members of the public for such violations as are other State and local officials. Therefore, in order to achieve this result, I strongly support the enactment of H.R. 3343, which would extend the provisions of 42 U.S. Code 1983 to apply within the District of Columbia.

Under the current law, a citizen of any State or territory has a Federal cause of action for redress of any violation of that citizen's rights,

privileges or immunities secured by the Constitution and laws. The rights protected by section 1983 are fundamental rights which are basic to our system of Government. So basic in fact that, during the course of the debate over the formulation of our Government, the ratification of the Constitution was premised upon enactment of that document which embodies the rights of national citizenship, known as the Bill of Rights.

SIGNIFICANCE OF SECTION 1983

The significance of 1983 to the enforcement of our basic rights cannot be underestimated. It is an essential element of an extraordinary series of congressional enactments that transformed the relationship between the Federal Government and its constituent parts with respect to the protection of federally created and constitutional rights. As noted by the Supreme Court, the very purpose of the 1983 was to interpose the Federal courts between the States and the people, as guardians of the people's Federal rights—to protect the people from unconstitutional action under color of State law, whether that action be executive, legislative, or judicial. As Representative Shellabarger, Chairman of the House Select Committee that drafted the Civil Rights Act of 1871, indicated that act provides a civil remedy for all people where, under color of State law, they or any of them be deprived of rights to which they are entitled under the Constitution by reason and virtue of their national citizenship.

The citizens of the District of Columbia are now national citizens and should enjoy the rights and privileges of that status as do the citizens of any of the several States. A right is a right only insofar as it is respected and enforced as such. Thus our citizens should be accorded access to the same offices as are other citizens for the vindication of these rights. I urge the passage of H.R. 3343.

Thank you, sir.

HUMAN RIGHTS ACT

Mr. MAZZOLI. Mr. Clarke, thank you very much for your statement. Let me ask you just one point. I understand that there is in the District of Columbia a Human Rights Law somewhat patterned after the Federal legislation. Is it your judgment—from the statement today I would think so—but is it your judgment that a citizen of the District of Columbia, despite the existence of a human relations law on the District of Columbia books, still does not have at his or her disposal a full array of opportunities to seek redress of injury?

Mr. CLARKE. Yes, sir. I say that recognizing that we have probably one of the strongest human rights laws of the country and recognizing the attempt that went into the drafting of that law. And I was the lead sponsor of making it a statute as as opposed to a regulation, which it was before the Home Rule Elected Council came in place. Recognizing that every attempt was made in that law to cover the plethora of constitutional rights, I would still make that statement.

No. 1, our law is a statute. Statutes are interpreted more distinctly and more narrowly than our constitutional rights. The Constitution is a growing document and with the Federal precedents that come under constitutional interpretation, the Constitution grows with the time more quickly than does a statute.

Second, we have what I think I alluded to right in that statement, the precedent of decisionmaking. To take a statute and have one scheme of decisionmaking by one court under it and then not have available to the person the same precedents, the same decisions, the same theories of stare decisis, et cetera, that would be effective in the Federal judiciary also could, even if it does not present a situation where one of our citizens does not have the availability under local law that they would under Federal law.

Finally, even recognizing and being very proud of our City Council in passing this section, the 1983 protects citizens against State and local officials. State and local officials adopted the Human Rights Law, and State and local officials can change the Human Rights Law. Our City Council has the jurisdiction; I hope it would never use it. It has the jurisdiction to change that law in such a way that it does not reflect the Constitution as fully as the Constitution does itself. Accordingly, with the District's coverage under 1983 our citizens would still be protected with respect to their national rights.

Mr. MAZZOLI. That is very interesting that despite the existence of a Human Rights Law on District books, and however zealously and forthrightly it is applied, it could be changed, where here section 1983 exists until Congress changes it, which of course since 1871 it has not chosen to do so and the likelihood is that it would not. So, it gives the citizens of the District confidence that their rights will remain protected and not abridged or changed by reason of some whim or caprice on the part of some elected body. That is a very good point.

I thank you very much, Mr. Clarke, and we appreciate your attendance.

I note that Ms. Rogers has joined us and if she has arranged herself sufficiently, we would invite you to come forward, Ms. Rogers.

Mr. Clarke, if you wish and if you have other things, you are certainly welcome. You have given us full help. Thank you very much.

Mr. CLARKE. Thank you.

[The prepared statement of Mr. Clarke follows:]

PREPARED STATEMENT OF DAVID A. CLARKE, CHAIRPERSON OF THE COMMITTEE ON THE JUDICIARY OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

I am pleased to have the opportunity to testify before this subcommittee on a matter of importance to the District of Columbia, the right of District residents to bring suits in federal courts for violations of their civil rights.

H.R. 3343

The proposed legislation, H.R. 3343, addresses an anomaly in the current federal law, thus presenting a peculiarly federal question which impacts upon the District of Columbia. I commend the Subcommittee on Judiciary, Manpower and Education of the House Committee on the District of Columbia for its decision to deliberate upon and resolve this important issue of federal rights.

DEFICIENCIES OF CURRENT LAW

Under the current federal law, 42 U.S.C. 1983, residents of the States are afforded an important remedy for violations of their constitutional rights at the hands of persons acting under color of state or local law or custom. Consequently, officials of state and local governments are held accountable for respecting and preserving the federal, constitutional rights of their local constituency, I submit that District residents should have no fewer remedies for the vindication of their constitutional rights than those enjoyed by residents of the states and that

officials and agents of the District of Columbia should be held no less accountable to members of the public for such violations than are other state and local officials. Therefore, in order to achieve this result, I strongly support the enactment of H.R. 3343 which would extend the provisions of 42 U.S.C. 1983 to apply within the District of Columbia.

Under the current law, 42 U.S.C. 1983, a citizen of any State or territory has a Federal cause of action for redress of any violation of that citizen's "rights, privileges or immunities secured by the Constitution and laws." The rights protected by 42 U.S.C. 1983 are fundamental rights which are basic to our system of government. So basic in fact that, during the course of the debate over the formulation of our government, the ratification of the Constitution was premised upon enactment of that document which embodies the rights of national citizenship, known as the Bill of Rights.

SIGNIFICANCE OF SECTION 1983

The significance of 42 U.S.C. 1983 to the enforcement of our basic rights cannot be underestimated. It is an essential element of an extraordinary series of Congressional enactments that transformed the relationship between the federal government and its constituent parts with respect to the protection of federally created and constitutional rights. As noted by the Supreme Court in *Mitchum v. Foster*, 407 U.S. 225, 242 (1971), "(t)he very purpose of section 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.' " (citation omitted). As Representative Shellabarger, Chairman of the House Select Committee that drafted the Civil Rights Act of 1871, indicated, the Civil Rights Act "provides a civil remedy for * * * all people where, under color of State law, they or any of them may be deprived of rights to which they are entitled under the Constitution by reason and virtue of their *national* citizenship." Cong. Globe, 42d Cong., 1st Sess., App. 68 (1871) (emphasis supplied).

The citizens of the District of Columbia are national citizens and should enjoy the rights and privileges of that status as do the citizens of any of the several states. A rights is a right only insofar as it is respected and enforced as such. Thus our citizens should be accorded access to the same offices as are other citizens for the vindication of these rights.

I urge the passage of H.R. 3343.

Mr. MAZZOLI. Ms. Rogers, take your time. I had welcomed you earlier and would welcome you again. You have been very helpful to this committee and to me as a member over the years that you have been with city government. We are delighted that Mayor Barry exhibited good wisdom in asking you to come aboard his staff and, of course, to run the Corporation Counsel's Office.

Without objection, your statement will be made a part of the record. But we certainly invite you to address the issue before this subcommittee, that is, with respect to section 1983 of United States Code, in any way you wish. We welcome you.

STATEMENT OF MS. JUDITH ROGERS, CORPORATION COUNSEL, DISTRICT OF COLUMBIA

Ms. ROGERS. Thank you, Mr. Chairman. I appreciate your very generous remarks. It has always been my honor and privilege to appear before you and to work with the committee. As you know, and I have expressed to you, the city has always been indebted to you for the support that you have shown and the time and energy you have been willing to devote to help us in home rule and these other matters.

I am delighted to be here today. Rather than take your time just to reread the statement I have prepared, which you have indicated is a matter of record, I would like to indicate generally that it is our position that we support the enactment of the bill. We think it is important that the citizens of the District of Columbia have the same type of access to Federal courts to vindicate their rights as would any other citizen in the United States who, just by happenstance, happens to reside in a State rather than the Nation's Capital. That is very much in tune with the commitment that the administration has had over the years, and it is certainly one that I strongly endorse and I know the Mayor does. And I am really here to indicate that we strongly support it and also for the record, to indicate that I think that the home rule government has indicated that in the absence of the access to Federal courts, the local government has taken a strong position in terms of enacting very strong local laws to protect civil rights and various other types of alleged abuses by officials. And I think the record is good as to what has happened under those laws. As you know, the new Director of the Office of Human Rights has a strong commitment to the enforcement of those local laws. But even with that strong local statutory base, we think it is important that the access to Federal courts be there.

Mr. MAZZOLI. Thank you. I am glad you made that final point. That would have been the question I had asked, that in view of a very strong Human Rights law on the books of the District of Columbia and the commitment of elected government and earlier appointed government to defend the rights of the citizens of the community against any abridgment under color of law of local authority, despite that, do you feel and city government feels that the bill before us would still be necessary.

Ms. ROGERS. That is correct.

Mr. MAZZOLI. Fine. Thank you.

COSTS OF THE LEGISLATION

Counsel reminds me that it might be well to have for the record some additional comments, perhaps, on whether or not you anticipate any unusual costs that would accrue to the District of Columbia in the event that this becomes law, which I fervently hope it should.

Ms. ROGERS. Yes, I weighed whether or not I would raise that point. We do anticipate, Mr. Chairman, that there would be additional costs as a result of litigation. There are, though, in certain areas clearly costs that the city must figure out a way to bear. And I would suggest that these are costs in an area of that nature.

Mr. MAZZOLI. Furthermore, I think that you could expect sympathetic response from this committee in the authorizations and I think with certain opportunity for maneuvering some sympathetic support from the Appropriations Committee if it is a matter of defending constitutional rights. Now there might be some other argument here and there, but certainly with regard to civil rights and where it would be true for Americans everywhere if our people have these rights, then it seems hardly anything more than nitpicking to deny them

to the District. So, I think while costs might be necessary for our record, they are certainly not pivotal as far as whether or not this bill should pass.

I certainly thank you, Ms. Rogers, and wish you continued good fortune downtown. Come back and visit us often.

Ms. ROGERS. Thank you very much, Mr. Chairman.

[The prepared statement of Ms. Rogers follows:]

PREPARED STATEMENT OF JUDITH W. ROGERS, CORPORATION COUNSEL, D.C.

Mr. Chairman and Members of the Committee: I am pleased to appear before the Committee this morning to present the views of the District Government on H.R. 3343. This bill would, in effect, provide direct access to the local Federal courts for persons claiming violation or deprivation of their Constitutional or civil rights by the District of Columbia acting through its officers and employees under color of any law or custom of the District of Columbia. It would be applicable to actions taken pursuant to District laws and regulations as well as Acts of Congress which are applicable exclusively to the District of Columbia with respect to the alleged deprivations of those rights, privileges, and immunities which are secured to persons within the District of Columbia and which occur after enactment of the bill.

At present, persons within the District of Columbia do not have a direct civil cause of action in the Federal courts for deprivation of their rights. In 1973 the Supreme Court held in *District of Columbia v. Carter*, 409 U.S. 418, that as the District of Columbia was neither a State nor territory, section 1979 of the Revised Statutes (42 U.S.C. sec. 1983) did not provide a remedy in the Federal courts for its prohibitions against actions of District officials. In this respect, the District of Columbia enjoys a unique status, as the civil action afforded by section 1983, since its inception in 1871, has been available to persons seeking redress for deprivation of their rights by the States and the officers of the States acting pursuant to State laws. More recently the restrictions of section 1983 have been extended to the acts of municipalities and other political subdivisions of the States.

For these reasons, it would be difficult to argue persuasively that the District of Columbia should not be amenable, in like manner as all the States, to those who seek redress against "official" actions, or that the citizens of the District are not entitled to the rights and remedies which, as a matter of law, are accorded to the citizens of the rest of the United States. Accordingly, the District Government supports the additional protections which will be made available to District citizens by the amendments to existing law offered through H.R. 3343.

This is not to say, however, that persons within the District of Columbia are presently without a remedy for deprivation of civil rights. They can and do—with ever increasing frequency—bring actions in both the local and Federal courts of the District officials. The laws of the District are strong and well designed to accord District citizens with a vehicle to redress alleged wrongful official acts. The doctrine of governmental sovereignty or immunity, now well eroded, is no longer available to the District as a defense to the legitimate claims of citizens against official wrongdoings, and there can be no questions that our local court systems is ever mindful and zealous of its role and duty as the protector of civil rights.

The Federal courts of the District are, of course, available for the protection of Federal rights. While the avenue of section 1983 is closed, District citizens who meet the jurisdictional amount-in-controversy requirement are not denied access to these courts for the enforcement and vindication of their Constitutional and civil rights. Thus, we view the extension of civil rights protections of H.R. 3343 as supplementary to those presently enjoyed by District citizens.

The additional remedy which will become available with the enactment of H.R. 3343 may result in increased litigation in the Federal courts of the District and a concomitant increase in the workload of my office. Nevertheless, because of the importance of the availability of a Federal forum for District citizens for the litigation of civil rights matters, the District Government must support the favorable consideration of H.R. 3343.

Thank you, Mr. Chairman, for the opportunity to present the views expressed in this statement.

Mr. MAZZOLI. The committee would like to call forward Mr. Ralph Temple, if he is in the room, thank you, of the American Civil Liberties Union. Mr. Temple, you have been here with us this morning; so, your statement, without objection, is a part of the record and you might address the issue before this subcommittee in whatever way you wish.

**STATEMENT OF RALPH J. TEMPLE, ESQ. AMERICAN CIVIL
LIBERTIES UNION, NATIONAL CAPITAL AREA**

Mr. TEMPLE. Thank you, Mr. Mazzoli. I want to express our gratitude for this opportunity to appear. I also want to express our delight at hearing these officials representing the Government of the District of Columbia and the judiciary. I am proud of its government. I do not know that you would find many jurisdictions like this one, where we are always clamoring that we need more independence, home rule, and indeed we do. But they have enough statesmanship at the administrative level, the executive level, and the judicial and the legislative levels to recognize the important constitutional principles here.

I do not want to repeat the points that have been made. So let me just focus on four or five points that perhaps have not been emphasized.

FEDERAL JUDICIARY

Although everybody has acknowledged the importance of the Federal judiciary, I would like to underscore that one. There is none to match its product in the history of the world. There is no society in history that has had so many social revolutions as we have with so little bloodshed. One can look at what has been going on in England for the past 15 years and wonder why we did not suffer the same violence when the black freedom struggle in the South took place. I think it is because there is not a judicial system in the world to match the Federal judicial system; a judicial system which gave us *Brown v. Board of Education*; *Baker v. Carr*, which revolutionized legislatures all over the country by making them more representative; *The Pentagon Papers* case; and *United States v. Richard Nixon*. These cases involve complete changes of power brought about by high level principles detached from political emotions. And that is what the value of the Federal judiciary is.

Particularly here in the Nation's Capital, where citizens come from all over the country to exercise their constitutional rights, here of all places, the doors of the Federal courthouse should be wide open and not closed as they are open in other jurisdictions. Because here in particular, a citizen from Kentucky or California has to know that he will be before an independent forum whose allegiance is only to the Constitution, and not to local sentiment, when he comes to exercise his constitutional rights.

SECTION 1983

Another very practical consideration, the Congress enacted a provision, 42 U.S.C. section 1988, which enables citizens who vindicate their constitutional rights under 1983 to recover attorneys' fees. Now in doing that, the Congress recognized that a right is no good unless one can get an attorney to take the case. And heaven knows there is not

that much money in constitutional litigation. That is why a provision for attorneys' fees is very important. At the present time, unfortunately, that is one more thing that is available all over this country except in this city.

COSTS OF THIS LEGISLATION

Incidentally, on one economic factor I would take a little bit of issue with the corporation counsel, with Judith Rogers. I think as to the costs that have been spiraling in terms of law suits against local officials, that has been going on without section 1983 and it will continue. As one of the organizations that brings a lot of those kinds of suits, if the ACLU has to bring them in the local judiciary, we will bring them in the local judiciary. If anything, the costs will be lowered by transferring it where it belongs, to the Federal judiciary. So, I think that the costs that are going up would be going up anyway and that this bill will add no increment to the costs. If anything, it will diminish the costs by taking burdens that should not be on the local judiciary and putting them on the Federal judiciary.

One last thing. We litigated the *Carter* case.

DISTRICT OF COLUMBIA V. CARTER

Mr. MAZZOLI. Excuse me. I should have made note. Counsel had called it earlier to my attention that you were on that *Carter* case, which is the background of today's hearing.

Mr. TEMPLE. Yes, Mr. Chairman. And I would say with all due respect to the Supreme Court that I believe it is a misreading of legislative history. I do not want to crawl through all of the provisions because it gets a little bit like the New York Times, acrostic; it is fascinating, but there is not too much flesh and blood in it.

All I can say is that we summarize this briefly in the written testimony we have submitted. I have a more elaborate description of it in a petition for rehearing that we filed with the court that I would also submit to the committee.

Mr. MAZZOLI. Without objection, it will be made a part of the record.

Mr. TEMPLE. And just to summarize it, basically what happened was the Supreme Court held in 1948 that the same term, "State or territory", as used in 42 U.S.C. 1981, included the District of Columbia. So, we all assumed that 42 U.S.C. 1983 applied to the District of Columbia and that is why neither side briefed or argued that issue in the *Carter* case. And suddenly on oral argument, the Court, *sua sponte*, came up with this idea. By that time, I am afraid they kind of dug their heels in on it. They said, in effect, "Well, it is true that we said that State or Territory includes the District of Columbia for section 1881. But section 1883 was a part of the Civil Rights Act of 1871, whereas 1881 was part of the Civil Rights Act of 1866 and they mean different things and they come from different sources." It is not so. It is true that these two provisions were enacted at different times, but when they finally came together it was because the Congress appointed a revisory commission. And the commission brought them all together and scrambled them around and came up with these different sections. It is quite clear that if you tiptoe through all of that history that no difference was intended by Congress.

So, although H.R. 3343 stands on its own merits, it will also rectify what I think is a misreading and a distortion of Congress earlier intention.

Mr. MAZZOLI. As I said earlier and you were here I think, when Judge Newman testified, I suggested then while this is certainly not a technical change in one way because it could extend or guarantee the District of Columbia residents and visitors to this Capital the rights that every other citizen in the United States enjoys; but it is technical in one nature and that is that it seems only a technical reading of his statute which would lead one to believe that the District was not intended to be covered. So, in one sense this subcommittee would be rectifying sort of a technical oversight; in another, it is much more profound than that.

PROCEDURE PRIOR TO 1970

Mr. Temple, were you here when Judge Newman also said that prior to 1970 in the Court Reform and Revision Act that people who would seek, in the District of Columbia, to protect their rights did in fact go to Federal courts. So, in a sense where they may have been looked at differently because they were enforcing a local right or a nonconstitutional right, they were actually in Federal courts then, if I understood Judge Newman correctly.

Mr. TEMPLE. That is right, Mr. Chairman. And they were in Federal courts right up until that *Carter* decision and if truth be told, we are still in Federal courts.

We have relied on Federal question jurisdiction. The problem with that is it creates a very unhealthy process. Before one has a trial and before one has a jury—and it should be a jury of American people that says how many dollars freedom of speech is worth, how many dollars being locked up over a weekend is worth; that is very much a “people” kind of evaluation. Instead of getting that far, right at the outset one has to prove that these inviolable rights are somehow economically worth \$10,000. And it is just an unhealthy process.

Mr. MAZZOLI. If I understand correctly, if this bill passes and the people in the District come under section 1983, they would not have that initial problem of establishing the Federal question and the Federal jurisdictional amount; is that correct?

Mr. TEMPLE. That is correct, Mr. Chairman.

Mr. MAZZOLI. I thank you very much for your help. I am satisfied with the testimony. It is very good. I see no hands for questions. We thank you and appreciate your help today.

Mr. TEMPLE. Thank you.

[The prepared statement of Mr. Temple follows, together with petition for rehearing in the Supreme Court of the United States, Term 1971, No. 71-564, *District of Columbia*, petitioner v. *Melvin Carter*, respondent, on writ of certiorari to the U.S. Court of Appeals for the District of Columbia Circuit:]

PREPARED STATEMENT OF RALPH J. TEMPLE FOR THE AMERICAN CIVIL LIBERTIES UNION OF THE NATIONAL CAPITAL AREA

Mr. Chairman and members of the committee, my name is Ralph J. Temple. I am the Director of the American Civil Liberties Union of the National Capital

Area. The American Civil Liberties Union supports H.R. 3343, and we are grateful for this opportunity to present our views on this legislation.

H.R. 3343 would amend two existing federal statutes: Section 1983 of Title 42 of the United States Code—and Section 1343 of Title 28 of the United States Code. The net effect of these proposed changes would be to extend the coverage of Section 1983 to those persons who act under color of the law of the District of Columbia. We respectfully submit that extension is a change that is long overdue.

PRESENT LAW

The ACLU believes that Section 1983 is one of the most important safeguards to the Constitutional rights of the citizens of this country. By its own terms, Section 1983 provides that every person who, under the color of the law of any state or territory, deprives a citizen or anyone within the jurisdiction of rights, privileges or immunities guaranteed by the Constitution, shall be liable to the party injured in a suit for equitable relief or in a civil suit for damages. Section 1343 of Title 28, in turn, gives the federal district courts original jurisdiction over suits brought under Section 1983. Taken together, those two statutes provide assurance to every citizen that the Federal courts are available to redress violations of Constitutional rights by authorities of state or local government.

IMPACT OF DISTRICT OF COLUMBIA V. CARTER

However, as a result of the Supreme Court's decision in *District of Columbia v. Carter*, 409 U.S. 418 (1973), that assurance is not available to residents of the District of Columbia, or for that matter, those who travel into the District for business, political or personal reasons. In *District of Columbia v. Carter*, the Supreme Court held that the District is not a "state or territory" for the purposes of determining whether the D.C. Government and its agents and employees are covered by the portion of Section 1983 which creates a right of action against any person who deprives an individual of a constitutionally protected right while acting under color of law of "any State or Territory." In the view of the Court, Congress simply did not intend to include the District of Columbia within the terms "State" or "Territory" when it enacted Section 1983 and subsequent modifications to that statute.

The impact of the *Carter* decision is to deny to the people of the District of Columbia an access to the Federal Court that is available to citizens in every other jurisdiction in this Country. In their struggle for home rule and for voting rights in the Congress, the people of the District frequently have the feeling that they are denied fundamental rights available to all other citizens. It is anomalous that they are now denied the right of equal access to the federal court system.

Section 1983 was designed to give citizens an extra measure of protection against violations of their Constitutional rights. Enacted in the period following the Civil War, this Act of Congress said, in effect, if local officials violate your federal rights, you have a choice: you can sue in the local courts, or you can sue in the federal courts—it is up to you—it will be your right as a citizen to choose either one, and no official, high or low, federal or local, may deny you that right.

Access to federal courts is important as an extra measure of protection for several reasons.

One is the guaranteed and total independence of federal judges from local political influences or pressures. Today, in the District of Columbia, we have an exemplary local court system, with exemplary people serving on the bench. But that is not the point. In legislation, we must consider the judiciary, not in personal terms, but in institutional and historic terms. The laws and institutions created must be viewed for their efficacy, not just today, but for the decade, the next generation, for scores and perhaps hundreds of years.

Federal judges are appointed for life and cannot be subjected to penalty or removal, except by impeachment. That provision of Article III of the United States Constitution is what gives such a strong base of independence to the federal judiciary. Local judges in the District of Columbia, on the other hand, are appointed only for 15-year terms. They are subject to punishment and removal by a Judicial Tenure Commission, and that same Commission must pass their qualifications when their 15-year terms expire. Inasmuch as the Mayor, the City Council, and the President of the United States all participate in appointing the Judicial Tenure Commission, it is a body which, over the length

of time, is likely to be susceptible to the local political climate. Indeed, some years ago, there were serious questions raised as to whether the Judicial Tenure Commission was unjustifiably selecting a Black, liberal judge as a target. See, e.g., Justice Douglas' dissenting opinion in *Palmore v. United States*, 411 U.S. 389, at 363-64 (1973).

In short, the local judges do not have the same independence which is enjoyed by the federal judges who are charged with the responsibility of deciding cases brought under Section 1983. Accordingly, there is no assurance that they will provide the same measure of protection to the Constitutional rights of District residents that is afforded to those citizens who have access to federal courts pursuant to Section 1983.

Some have suggested that the Congress itself provides an adequate substitute for the protection afforded by Section 1983. Indeed, in its opinion in the *Carter* case, the Supreme Court itself suggested that one of the reasons why Congress may have believed that it could safely omit the District from the coverage of Section 1983 was because Congress has plenary power over the District and is therefore, in theory, in a position "to observe and, to a large extent, supervise the activities of local officials." It is apparent, however, that Congressional oversight of the daily affairs of the District is impractical, at best, and no substitute for judicial remedies for violations of Constitutional rights. It is unrealistic and undesirable to expect Congress to exercise the kind of direct supervision over the conduct of local District authorities that seems to be implied by the Supreme Court as a rationale for the strange decision in the *Carter* case.

Thus, the Court was wrong in believing that District citizens will have the same degree of protection as other citizens, with Congressional committees substituting as federal courts.

Another important aspect of the protection afforded by § 1983 is the award of attorneys' fees. 42 U.S.C. Section 1988 provides for the award of attorneys' fees "as part of the costs" in suits brought under the Civil Rights Acts, among the suits, specifically including Section 1983. The effect of this guarantee of fees if the suit succeeds is to assure the availability of attorneys willing to bring such actions. Reports from both the House and Senate Judiciary Committees expressly note this purpose. The House report contains the following language:

The effective enforcement of Federal civil rights statutes depends largely on the efforts of private citizens. Although some agencies of the United States have civil rights responsibilities, their authority and resources are limited. In many instances where these laws are violated, it is necessary for the citizen to initiate court action to correct the illegality. Unless the judicial remedy is full and complete, it will remain a meaningless right. Because a vast majority of the victims of civil rights violations cannot afford legal counsel, they are unable to present their cases to the courts. In authorizing an award of reasonable attorneys' fee, H.R. 15460 is designed to give such persons effective access to the judicial process where their grievances can be resolved according to law.

Plainly, the lack of a statutory provision for attorneys' fees will make it harder for persons whose rights are violated in the District of Columbia to find counsel willing to take their grievances to court.

All this is quite anomalous, inasmuch as one would have expected that in the Nation's capital there would be at least as much access to the federal courts to protect Constitutional rights from local encroachments, as that found in the states.

And indeed, a careful reading of the legislative history of 42 U.S.C. section 1983 and related legislation indicates that Congress intended full access to the federal courts. The Supreme Court's decision in *District of Columbia v. Carter* is, in our view, erroneous. The Court concluded that 42 U.S.C., section 1983 did not apply to the District of Columbia because it applies only to each "State and Territory", and the District is neither. The Court explained away its earlier ruling in *Hurd v. Hodge*, 334 U.S. 24 (1948), where it concluded that Congress meant the phrase "State or Territory", as used in 42 U.S.C., section 1981 to include the District of Columbia. The Court's reasoning was that Section 1981 was enacted in 1866 when the District was still a territory, but Section 1983, first enacted in 1871, was not amended to include each "Territory" until 1874, on the same day that other legislation terminated the District's status as a territory. Further, the Court reasoned, 42 U.S.C., section 1981—the 1866 Act (which was designed to protect the right to vote) was intended to apply more broadly than 42 U.S.C., section 1983—the 1871 Act (designed to protect other Constitutional

rights). Hence, said the Court, it made sense for Congress to use "Territory" to include the District of Columbia in the 1866 Act (Section 1981), and to use the same word not to include the District in the 1871 Act (Section 1983).

This analysis defies clear thinking and the actual history of these provisions. The addition of the term "or Territory" to Section 1983 was first suggested in 1872, shortly after the 1871 Civil Rights Act became law. That suggestion came from a three member commission appointed by the Congress to "revise, simplify, arrange and consolidate" all of the then-existing federal statutes. Pursuant to that appointment, the revisory commission redrafted Section 1983 in a form which was carried over intact and subsequently enacted in the Act of July 20, 1874, in precisely the same language employed in the version of Section 1983 which is in effect today.

The revisory commission itself did not provide any explanation for its proposed modification to the preexisting version of Section 1983. However, the format in which the commission's proposals were presented, along with comments made by Congressman Lawrence on the floor of the House with respect to the rationale underlying the proposed changes, indicate that the commission and the Congress were both of the belief that Section 1983 was intended to confer a right of civil action for violations of the 1866 and 1870 Civil Rights Acts. Since the 1866 Act covered residents of the federal territories, it was apparently felt to be necessary to add the term "or Territory" to Section 1983 in order to make 1983 coextensive with the statute which it was intended to enforce.

That history of the evolution of Section 1983 would appear to lead to the unsurprising conclusion that the same work used in two similar statutes amended at the same time mean the same thing. It makes no sense to conclude that Section 1983 has a different geographical scope that the 1866 Act, the statute which it is designed to enforce. The fact that the territorial government in the District of Columbia was terminated on the same day as the term "or Territory" was officially added to Section 1983 was, in reality, a coincidence and has no bearing whatever on Congressional intent. The addition of the words "or Territory" to Section 1983 was first contemplated in 1872 when the revisory commission first redrafted the statute, some two years prior to the time that the form of the District Government was changed. At that time the District of Columbia was plainly a "Territory", and it is plain that Congress did not mean to carve out one jurisdiction in the whole country that would fall outside the protections of Section 1983.

In conclusion, this is a simple reform to correct an erroneous reading of Congressional history in the *Carter* case, and to extend to the people of the District of Columbia, and all citizens who visit their Nation's capital from all over the country, the same right of access to federal courts, in Constitutional cases, as that available in every other jurisdiction in the Nation.

PETITION FOR REHEARING¹

IN THE
Supreme Court of the United States
TERM 1971

No. 71-564

DISTRICT OF COLUMBIA,

Petitioner,

v.

MELVIN CARTER,

Respondent.

On Writ of Certiorari to The United States Court of Appeals
for the District of Columbia Circuit

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¹Petition for Certiorari Filed October 21, 1971
Certiorari Granted January 10, 1972

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PETITION FOR REHEARING

SUMMARY OF ARGUMENT

On January 10, 1973, this Court reversed the judgment of the court below on the ground that the District of Columbia was not a "State or Territory" within the meaning of 42 U.S.C. §1983. This decision was premised on the following explicit assumptions:

(1) that the Civil Rights Act of 1871, enacted primarily to enforce the Fourteenth Amendment, was aimed solely at

regulating procedures in the states, and was not intended to be applicable to the District of Columbia;

(2) that 42 U.S.C. §1983 is derived solely from the Civil Rights Act of 1871, and is therefore limited in its application to the targets of that statute; and

(3) that although the District of Columbia had a territorial government from 1871-74, that fact does not bring the District within the meaning of the phrase "State or Territory" because the words "or Territory" were not enacted until June 20, 1874, the same day that Congress abolished the "territorial" form of government in the District of Columbia (slip op., n. 25).

Since the issue of the District's inclusion within the phrase "State or Territory" was never raised until oral argument before this Court, appellees had no occasion to research the question prior to argument, nor did the three-day period allowed for filing post-hearing supplementary memoranda furnish adequate time for the research.

Subsequent research, conducted since the Court's opinion, now reveals compelling evidence in the legislative history which points to contrary conclusions on all three of these basic assumptions.

I. THE CIVIL RIGHTS ACT OF 1871 WAS NOT INTENDED TO BE LIMITED TO THE STATES, BUT WAS MEANT TO APPLY THROUGHOUT THE UNITED STATES.

The Civil Rights Act of April 20, 1871, was entitled "An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, *and*

for Other Purposes”¹ (emphasis added). It is apparent from President Grant’s implementing proclamation of May 3, 1871,² that the Act was intended to apply not merely to the states, but throughout the country. In the same clear and unequivocal language that had been used by the 39th Congress to describe the intended coverage of the 1866 Civil Rights Act, some five years earlier,³ President Grant declared that

This law of Congress *applies to all parts of the United States*, and will be enforced *everywhere*, to the extent of the powers vested in the Executive (emphasis added).

Only after noting this universal applicability of the Act does President Grant proceed to “particularly exhort” those citizens in the more turbulent areas, whose activities led to the enactment, to voluntarily suppress violence in their areas.

The President proceeds to express his

“earnest wish that peace and cheerful obedience to law may prevail throughout the land, and that all traces of our late unhappy civil strife may be speedily removed. These ends can be easily reached by acquiescence in the results of the conflict, now written

¹ If, as the Court assumes, the statute were intended merely to enforce the Fourteenth Amendment, there would be no necessity for the last four words of its title.

² 17 Stat. 949-50 (see copy attached hereto as “Appendix A”).

³ Slip opinion, p. 5, n. 7.

in our Constitution, and by the due and proper enforcement of equal, just, and impartial laws *in every part of our country* (emphasis added).^{4, 5}

II. 42 U.S.C. §1983 WAS INTENDED TO ENFORCE THE CIVIL RIGHTS ACTS OF 1866 AND 1870, AS WELL AS THE CIVIL RIGHTS ACT OF 1871.

In *Hurd v. Hodge*, 334 U.S. 24, 31 (1948), this Court held that the District of Columbia was included within the phrase "State or Territory" in 42 U.S.C. §1982. In the instant case, the Court has distinguished the *Hurd* determination by linking §1982 with the Civil Rights Act of

⁴ President Grant's sweeping language is wholly consistent with the title of the Act. Just as the writ of the new law was to run to "every part of our country," so was the aim of the Act not merely to enforce the provisions of the Fourteenth Amendment, but also "for other purposes." It may be inferred from the proclamation that one such purpose was to enforce the Thirteenth, as well as the Fourteenth Amendment, since both of these Civil War amendments are presumably included within the reference to "the results of the conflict, now written in our Constitution."

⁵ There can, of course, be no question of Congress' power to legislate for the District under Article I, §8 cl. 17. It is significant that Congress' power to tax and legislate for the District was expressly adverted to during the debates on the Act of April 20, 1871 in the context of discussing the power of a legislature to make a local unit respond in damages. Cong. Globe, April 19, 1871, p. 799 (Rep. Smith). Although the question had not been squarely raised, Rep. Smith thought it relevant to point out that Congress already possessed the power over the District which was implicit in the bill then being discussed. *Ibid.*

April 9, 1866, Ch. 31, §1, 14 Stat. 27, which Act was enacted to implement the Thirteenth Amendment, the scope of which is undeniably nationwide (see cases cited at slip op., p. 4). Since, as the following history indicates, what is now §1983 was intended to enforce the 1866 Civil Rights Act as well as those of 1870 and 1871, the inference is inescapable that the District of Columbia must be included within its scope.

The Civil Rights Act of April 9, 1866, c. 31 §1, 14 Stat. 27, provides, in part, that:

All . . . citizens . . . shall have the same right, in every State or Territory in the United States, . . . to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of the person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding.

After the enactment of the Fourteenth Amendment in 1868, the original Civil Rights Act was reenacted in the enforcement act of May 31, 1870, 16 Stat. 144, as follows:

All persons within the jurisdiction of the United States shall have the same right in every State or Territory in the United States to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be

subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

On April 20, 1871, the Ku Klux Klan Act⁶ was enacted as a companion statute to the Civil Rights Act of 1866.

In 1872, these three statutes were revised and consolidated by the revisory commission⁷ as follows:

Title XXVI *Civil Rights*

Section 1. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make

⁶ "Any person who under cover of any law, statute, ordinance, regulation, custom, or usage of any state, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any law, statute, ordinance, regulation, custom, or usage of the state to the contrary notwithstanding, be liable to the party injured, in any action at law, suit in equity, or other proper proceeding for redress; *such proceeding to be prosecuted* in the several district or circuit courts of the United States, *with and subject to the same rights of appeal*, review upon error, *and other remedies provided in like cases* in such courts *under the provisions of the Act of the 9th of April, 1866*, entitled "An Act to Protect All Citizens in the United States in Their Civil Rights, and to Furnish the Means of Their Vindication," and the other remedial laws of the United States which are in their nature applicable in such cases" (emphasis added).

⁷ The revisory commission of "three persons, learned in the law" was appointed by the Congress "to revise, simplify, arrange and consolidate" all statutes of the United States. Act of June 27, 1866 (39th Cong., 1st Sess., c. 140, 14 Stat. at L., 74). (continued)

and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Section 2. All citizens of the United States shall have the same rights, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Section 3. Every person who, under color of any statute, ordinance, regulation, custom, or

7 (continued)

The intended function of the Commissioners was described as follows by Rep. Lawrence:

The commissioners were duly appointed, and executed a part of the work assigned them, when the term expired. Congress, by act of May 4, 1870, revived the original statute, and authorized the appointment of three commissioners to complete the work within three years. (16 Statutes, 96.) The commissioners were duly appointed. They were authorized not merely to copy and arrange in proper order, and classify in heads the actual text of statutes in force, but to 'supply the omissions and amend the imperfections of the original text.' In executing this work they very often translated into their own language the ideas and objects of statutes, so that the new form adopted might be said to be *inspired by Congress in ideas*, but not in words. This mode frequently condensed existing laws, and thus often improved them.

usage of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.⁸

The Act of March 3, 1873, 17 Stat. 579, authorized the Committee of the Senate and the House of Representatives on the Revision of the Laws to "contract with some suitable person to prepare . . . the revision of the statutes then already reported by the commissioners, or which might by them be thereafter reported before the 4th of May, 1873" in a form which might be acted upon by the Congress at the opening of the session of December, 1873.

Mr. Durant was chosen to undertake this revision, and Durant's Revision was reported to the Committee on Revision (Rep. Poland, Chairman) in December, 1873.

Durant's Revision carried over intact as Sections 1982, 1983 and 1984 the same language that was used by the Commissioners in Sections 1, 2 and 3 of Title XXVI.

On January 21, 1874, Rep. Lawrence took the floor of the House to explain in detail the process by which the sequence and content of these three related sections

⁸ Revision of the United States Statutes as Drafted by the Commissioners Appointed for that Purpose, Washington, Government Printing Office, 1872, Vol. I, p. 947.

was developed. After quoting at length from the Civil Rights Acts of 1866 and 1870, Rep. Lawrence stated as follows:

The Commissioners, in Vol. I, p. 947, Title XXVI and Sections L, 2 and 3, and Mr. Durant in his volume of General Laws, p. 432, Title XXIV, Sections 1982, 1983 and 1984, both, under the head of "Civil Rights," translate the sections I have cited from the Acts of 1866 and 1870, so far as they relate to a declaration of existing rights, *and confer a right of civil action for their violation* as follows: [Rep. Lawrence then quotes Sections 1, 2 and 3 from the Commissioners' Draft, which are set forth at pp. 6-8, *supra*].⁹

The sum and substance of this explanation, to which no objection was raised, is that Sections 1 and 2 of the Commissioners' Draft were intended to restate the substance of the Civil Rights Acts of 1870 and 1866, respectively, while Section 3 was intended to "confer a right of civil action for their violation."¹⁰ To accomplish this purpose, the Commissioners had found it necessary to add the words "or Territory" to the third section. Only by this addition could the enforcement section be coextensive with the 1866 and 1870 Acts which it was intended to enforce.¹¹

⁹ Cong. Record, Vol. 2, Pt. 1, 43rd Cong., 1st Sess., p. 828.

¹⁰ Of course, Section 3 of the Commissioners' Draft also carried forward the corresponding provision of the Act of April 20, 1871.

¹¹ Because of the brevity of the 3-day period allowed for filing the post-hearing briefs on this issue, counsel did not find Rep.

Sections 1, 2 and 3 of the 1872 Commissioners' Revision have been carried forward intact through Durant's Revision, through the Revised Statutes of 1874 and exist today, verbatim, as §§1981, 1982 and 1983 of Title 42. The following table shows the corresponding section designations:

<u>Commissioners' Revision (draft) of 1872</u>	<u>Durant's Revision (1873)</u>	<u>Rev. Stat. (1874)</u>	<u>U.S. Code Title 42</u>
Title XXVI §1	§1982	§1977	§1981
§2	§1983	§1978	§1982
§3	§1984	§1979	§1983

The implications of this legislative history for the present issue, and in terms of current U.S. Code designations, would appear to be inescapable: What we now know as §1983, in addition to embodying the cause of action created by the Act of April 20, 1871, was intended to confer a cause of action for violations of what are now §§1981 and 1982, as the phrase "or Territory" was added in order to make the scope of §1983 co-extensive with the two preceding sections. It necessarily follows that the phrase "State or Territory" was intended by the revisory commission in 1872 to have the same scope in all three sections. This Court's earlier determination in *Hurd* that the District is included within §1982 thus dictates a similar inclusion in §1983.

¹¹ (continued) Lawrence's explanation, which constitutes a rather critical piece of the legislative history. Accordingly, the Court was misled into thinking that "The phrase 'or Territory' was added, without explanation, in the 1874 codification and revision of the Statutes at Large" (slip op., p. 7, n. 11).

III. THE DISTRICT'S TERRITORIAL STATUS AT THE TIME THE WORDS "OR TERRITORY" WERE ADDED FURNISHES FURTHER SUPPORT FOR THE DISTRICT'S INCLUSION IN §1983.

In appellee's post-argument memorandum, it was pointed out that as of February 21, 1871 the District of Columbia possessed all of the essential attributes of a "Territory" and that several members of Congress referred to that Act as creating a territorial government for the District of Columbia.¹² Appellees believe that the several characterizations in the Congressional Globe of the Act of February 21, 1871 as creating a "territorial" government for the District of Columbia, together with the terms of the Act itself, indicate rather clearly that the Congress of 1871 intended to constitute and did in fact constitute the District a "Territory" by the said Act, which status still existed in 1872 when the words "or Territory" were added to what is now §1983.

The addition of the words "or Territory" in the 1872 revision leads inescapably to the conclusion that the District of Columbia was intended to be included, since the District was in law and in fact a "Territory" from February 21, 1871 until June 20, 1874.

In its opinion, the Court rejects the inference of intended inclusion of the District in §1983 on the ground that the District ceased to have a territorial government on the day the words "or Territory" were formally added to the statute (slip op., p. 12, n. 25). This conclusion distorts the relevant legislative history.

¹² Supplemental Memorandum, pp. 1-3

As has been pointed out, the words "or Territory" were first added to the revised statute in 1872 in the draft of the revisory commission published in that year (Vol. I, p. 947, Title XXVI, §3). The Act of June 20, 1874, c. 337, 18 Stat. pt. 3, 116, which abolished the territorial government for the District of Columbia was first reported to the House on June 16, 1874, as HR3680, and in the space of four days was passed by the House (June 17), passed by the Senate (June 18) and approved by the President (June 20). "Learned in the law" as the commissioners may have been, it requires an undue attribution of prescience to assume that the revisory commission in 1872 could have anticipated that the District's territorial status would be changed some two years later.¹³

¹³ On the contrary, any such inference was expressly negated by the statement of Rep. Poland, Chairman of the Commission of Revision of the Laws, in introducing the revised laws to the Congress: "I understand that we are proceeding upon an entire ignoring of anything that may be done during this session in the way of making laws. We are endeavoring to ascertain and set down what was the law at the beginning of this session, as if no Congress was ever to meet again and no new law to be passed." *Cong. Globe*, 43rd Cong., 1st Sess., January 21, 1874, p. 825.

IV. CONGRESS INTENDED ARTICLE III COURTS TO BE AVAILABLE TO PROTECT CONSTITUTIONAL RIGHTS IN THE NATION'S CAPITAL.

As this Court recognized in its opinion, it was of great concern to Congress to assure that Article III courts, in which judges are protected by life tenure, were available throughout the United States to protect constitutional rights (Slip op., note 28). Surely Congress knew that the court system of the District of Columbia, then an Article III system, could be changed by legislation. It seems unlikely that Congress, intent upon protecting Constitutional rights in all places in the United States, including the territories, would have excluded the District of Columbia. Such an oversight would mean that, today, the District of Columbia — the seat of the national government — would be the only jurisdiction in the United States in which citizens could not rely upon judges with life tenure for the protection of constitutional rights.¹⁴

Clearly, judges of the local court system in the District of Columbia are “peculiarly susceptible to . . . pressures, since their appointments . . . [are] dependent upon favorable recommendations” (Slip op., note 28) by the Department of Justice.¹⁵ In May 1971, the District

¹⁴ The problem is not resolved by federal question jurisdiction, under 28 U.S.C. Section 1331, where more than \$10,000 is in controversy. The existence of 42 U.S.C., Section 1983 has dispensed with the necessity for the courts to deal with the monetary value to be placed on such non-economic constitutional rights as freedom of speech and assembly, and freedom from police misconduct.

¹⁵ Judges of the Superior Court of the District of Columbia are appointed for 15 year terms by the President (D.C. Code, Sections 11-1501, 11-1502).

of Columbia Police Department arrested 13,000 persons in a single week, yet only a handful were subsequently convicted of any offense.¹⁶ The City prosecutor, reportedly under pressure from the Department of Justice to obtain convictions,¹⁷ complained to the Justice Department that the local judges were dismissing too many of these cases. The problem of attempting such blatant pressure against term judges was implicitly recognized by the Chief Judge of the local court when he expressed concern at the Corporation Counsel's actions.¹⁸

The inherently compromising pressures of the power of reappointment are further buttressed by a Commission on Judicial Disabilities and Tenure, empowered to remove

¹⁶ See The Washington Post, May 27, 1971, p. A-1; *May Day 1971: Order Without Law, An ACLU Study of the Largest Sweep Arrests in American History* (July 1972). On May 26, 1971, the United States Court of Appeals for the District of Columbia Circuit issued a temporary restraining order enjoining further prosecution of "any cases . . . in which appellees do not reasonably believe that they have in their files and records adequate evidence to support probable cause . . ." *Sullivan v. Murphy*, D.C. Cir. No. 71-1035, Order of May 26, 1971. This order resulted in the dropping of charges in the few thousand remaining cases. The Washington Post, May 27, 1971, p. A-1; October 2, 1971, p. A-1.

¹⁷ The Washington Daily News, May 19, 1971, p. 3. The President and the Justice Department both praised the police actions and vowed that similar measures would be taken against future demonstrations, if deemed necessary. The Washington Post, June 1, 1971, p. A-1; May 11, 1971, p. A-1.

¹⁸ The Washington Post, May 30, 1971, p. A-9.

judges for "any . . . conduct which is prejudicial to the administration of justice . . ." (D.C. Code, Section 11-1526). Three of the five members of this Commission are appointed by the President, and a fourth is appointed by the Mayor of the District of Columbia (who is appointed by the President) (D.C. Code, Section 11-1522). The Commission has publicly warned that it is maintaining close surveillance on the Superior Court judges.¹⁹

The safeguards of Article III are designed, in large part, "for the benefit of the whole people." *O'Donoghue v. United States*, 289 U.S. 516, 532-34 (1933). These safeguards, this Court has said, "promote that independence of action and judgment which is essential to the maintenance of the guaranties, limitations, and pervading principles of the Constitution . . ." *Evans v. Gore*, 253 U.S. 245, 253 (1920). The people of the District of Columbia are entitled to "all the rights, guaranties, and immunities of the Constitution, among which . . . [is] the right to have their cases arising under the Constitution heard and determined by federal courts created under, and vested with the judicial power conferred by, Article III." *O'Donoghue v. United States*, *supra*, 289 U.S. at 540.

¹⁹ The Washington Post, November 4, 1971, p. B-1.

CONCLUSION

The legislative history outlined in the foregoing section, and the long and deeply recognized necessity of judicial independence, compel the conclusion that Congress never intended to exclude the District of Columbia from the protection which Article III courts extend in all other parts of the United States. Accordingly, and particularly in light of the newly-discovered legislative history set forth above, the respondent asks for a rehearing on the question of the District's inclusion in what is now 42 U.S.C. §1983.

Respectfully submitted,

WARREN K. KAPLAN

1801 K Street, N.W.

Washington, D.C. 20006

Attorney for Respondent

APPENDIX A

No. 2.

May 8, 1871.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA:

A PROCLAMATION.

Attention of
the people called
to the act,
1871, ch. 22.
Ante, p. 13.

Enforcement
thereof enjoined,
&c.

Law to be en-
forced every-
where.

People in cer-
tain localities
particularly ex-

horted to sup-
press illegal
combinations,
&c.

The Executive
power to be fully
used to secure to
all citizens their
constitutional lo-
cal rights.

How peace
and cheerful
obedience to law
may be made to
prevail, &c.

The National
Government to
protect citizens
and restore peace
and order where
local communi-
ties fail, &c.

THE act of Congress, entitled "An act to enforce the provisions of the fourteenth amendment to the Constitution of the United States, and for other purposes," approved April 20, A. D. 1871, being a law of extraordinary public importance, I consider it my duty to issue this my proclamation calling the attention of the people of the United States thereto; enjoining upon all good citizens and especially upon all public officers, to be zealous in the enforcement thereof, and warning all persons to abstain from committing any of the acts thereby prohibited.

This law of Congress applies to all parts of the United States, and will be enforced everywhere, to the extent of the powers vested in the Executive. But inasmuch as the necessity thereof is well known to have been caused chiefly by persistent violations of the rights of citizens of the United States, by combinations of lawless and disaffected persons in certain localities lately the theatre of insurrection and military conflict, I do particularly exhort the people of those parts of the country to suppress all such combinations by their own voluntary efforts through the agency of local laws, and to maintain the rights of

all citizens of the United States, and to secure to all such citizens the equal protection of the laws.

Fully sensible of the responsibility imposed upon the Executive by the act of Congress to which public attention is now called, and reluctant to call into exercise any of the extraordinary powers thereby conferred upon me, except in cases of imperative necessity, I do, nevertheless, deem it my duty to make known that I will not hesitate to exhaust the powers thus vested in the Executive, whenever and wherever it shall become necessary to do so for the purpose of securing to all citizens of the United States the peaceful enjoyment of the rights guaranteed to them by the Constitution and laws.

It is my earnest wish that peace and cheerful obedience to law may prevail throughout the land, and that all traces of our late unhappy civil strife may be speedily removed. These ends can be easily reached by acquiescence in the results of the conflict, now written in our Constitution, and by the due and proper enforcement of equal, just, and impartial laws in every part of our country.

The failure of local communities to furnish such means for the attainment of results so earnestly desired imposes upon the National Government the duty of putting forth all its energies for the protection of its citizens of every race and color, and for the restoration of peace and order throughout the entire country.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this third day of May, in the year [SEAL.] of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-fifth.

U. S. GRANT.

By the President:

HAMILTON FISH, *Secretary of State.*

Mr. MAZZOLI. Our last witness this morning is Ms. Sari Marmur, a practicing lawyer and an elected member of the steering committee of the D.C. Affairs Division of the District of Columbia Bar. Ms. Marmur, you are welcomed today. Your statement, which I have before me, will be made a part of the record. I understand that you are, again, appearing on behalf of the D.C. Bar, right?

Ms. MARMUR. Yes.

Mr. MAZZOLI. Thank you.

Ms. MARMUR. The steering committee of the District of Columbia Affairs Division.

**STATEMENT OF SARI MARMUR, ESQ., D.C. AFFAIRS DIVISION,
DISTRICT OF COLUMBIA BAR**

Ms. MARMUR. Mr. Chairman and members of the subcommittee, I am an elected member of the steering committee of the D.C. Affairs Division of the District of Columbia Bar. It is a pleasure for me to come before the subcommittee today and inform its members and staff that the president of our bar, Mr. Pickering, and the bar's executive director, Mr. Ellwanger, have requested our division to submit well-considered commentary on this bill. We are eager to do that inasmuch as the bill does relate dearly and directly to the administration of justice in the District of Columbia.

However, by virtue of our bar's by-laws, we cannot do so at this time. The by-laws require that we submit a copy of the bill and a copy of our statement 14 days in advance of a board of governors meeting, and the next meeting will not be until some time around September 11.

Consequently, Mr. Chairman, I request on behalf of the members of the steering committee of our division, the District of Columbia Affairs Division, that the record on H.R. 3343 be kept open through September in order that you may consider our comments. By doing so, the steering committee of the District of Columbia Affairs Division will have been able to share with your subcommittee its professional perception of how H.R. 3343 related to the administration of justice in the District of Columbia.

(For subsequent submission, see p. 50.)

Thank you.

Mr. MAZZOLI. Ms. Marmur, thank you very much for your help. Certainly while this subcommittee intends this morning to mark up the bill and report it to the full committee, I certainly would have no objection and I am convinced our committee will not have any objection to technically leaving the record open until September 11, when a full-fledged report can be received from the D.C. Bar. I would say that there would be no objection and if there is some problem, if I have overlooked a committee rule, we will let you know so that we can make some rectification. But as it stands now, at the time of your next meeting you will be able to submit then to us your recommendation on this bill.

We thank you very much for coming today.

Ms. MARMUR. Thank you.

[The report of the bar association referred to by Ms. Sari Marmur follows:]

STATEMENT OF SARI B. MARMUR, Esq.

Mr. Chairman and members of the subcommittee, my name is Sari Marmur. I am a practicing attorney and an elected member of the steering committee of the D.C. Affairs Division of the District of Columbia Bar. It is a pleasure for me to come before the subcommittee today to inform its members and staff that the President of the District of Columbia Bar, Mr. John Pickering, and the Bar's Executive Director, Mr. J. David Ellwanger, have requested our D.C. Affairs Division to prepare and submit to you well-considered commentary on H.R. 3343. The Bar President's request to our Division is eagerly received by us for, indeed, H.R. 3343 relates dearly and directly to the Administration of Justice within the District of Columbia.

However, by virtue of the bylaws of the District of Columbia Bar our commentary on H.R. 3343 cannot legitimately be delivered to the Subcommittee on Judiciary, Manpower and Education until after the Board of Governors of the District of Columbia Bar has had an opportunity to review H.R. 3343 and the Division's work-product. The next meeting of the Bar's Board of Governors is scheduled for September 11, 1979.

Consequently, Mr. Chairman, I request on behalf of members of the steering committee of the District of Columbia Affairs Division that the record on H.R. 3343 be kept open through the month of September in order that you may consider our comments. By doing so Mr. Chairman, the steering committee of the District of Columbia Affairs Division will have been able to share with your subcommittee its professional perception of how H.R. 3343 relates to the administration of justice in the District of Columbia.¹

I thank you, Mr. Chairman.

Mr. MAZZOLI. This completes the series of witnesses we have and our subcommittee stands adjourned to meet in just a moment.

[Whereupon, at 10:25 a.m., the subcommittee adjourned, subject to the call of the Chair.]

[The further submission from the District of Columbia Bar follows:]

THE DISTRICT OF COLUMBIA BAR,
Washington, D.C., November 14, 1979.

Representative ROMANO L. MAZZOLI,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. MAZZOLI: On behalf of the Division V (Criminal Law and Individual Rights) and Division VI (District of Columbia Affairs) of the District of Columbia Bar, I am sending the enclosed statement in support of H.R. 3343. As noted in the statement the views are presented on behalf of Divisions V and VI and do not represent the views of the District of Columbia Bar or of its Board of Governors.

I hope that the House acts expeditiously to enact this important piece of legislation which protects the civil rights of citizens of the District of Columbia and all other persons who work in or visit this city.

Sincerely,

KAREN CHRISTENSEN,
Division V Steering Committee.

Enclosure.

STATEMENT IN SUPPORT OF H.R. 3343

On behalf of the Division V (Criminal Law and Individual Rights) and Division VI (District of Columbia Affairs) of the District of Columbia Bar we would like to offer the following comments in support of H.R. 3343, a bill to amend 42 U.S. § 1983. The District of Columbia Bar represents all of the approximately 30,000 lawyers who are licensed to practice law in the District of Columbia. The Bar is divided into 17 divisions, each of which concerns itself with a particular subject area. Division V has been joined by members of the Bar who are particularly interested in the problems of criminal law and individual rights. The members of Division VI are concerned with the various aspects of the practice of law in the District of Columbia. These views are being presented only on behalf

¹ Any statement by the D.C. Affairs Division will represent only the views of the Division and not those of the Board of Governors of the District of Columbia Bar.

of Divisions V and VI of the District of Columbia Bar. They do not represent the views of the District of Columbia Bar or of its Board of Governors.

H.R. 3343 authorizes civil rights suits against officials of the District of Columbia when they violate the constitutional rights of persons within this jurisdiction. We feel very strongly that citizens of the District of Columbia and all other persons who work in or visit this city should not be deprived of the opportunity to vindicate their civil rights in the same way that citizens of the several states do.

The injustice of the current situation can be illustrated thusly. A resident of Maryland whose civil rights have been violated by a state official has access to the federal courts in Maryland but that same person, when visiting or working in the District of Columbia, has no such right to redress his civil rights when the District line is crossed. Furthermore, District residents who enter neighboring or other states acquire a right to protect their civil rights which they do not have in their home city. The identical set of facts and circumstances which give rise to an action in federal court against a Maryland or Virginia state official do not now entitle a local resident to seek redress in federal court here. This anomalous situation must be corrected.

We have considered the Supreme Court's decision in *District of Columbia v. Carter*, 409 U.S. 418 (1973). Assuming that the Court was correct in saying that Congress did not intend to include the District of Columbia within the purview of Section 1983, we feel the time has come for Congress to extend the protections of Section 1983 to the citizens of the District of Columbia. Particularly in view of the recent "home rule" legislation for the District of Columbia, it seems appropriate that the analogy between the District of Columbia and the various states should be carried forward into the area of protection of civil rights.

The District now exercises self-government and in relation to individual citizens is functionally indistinguishable from other municipalities. Moreover, recent court reform measures have created two separate and distinct judicial systems in this jurisdiction. Previously, access to federal courts was assured because of the jurisdiction of federal courts over local matters. Presently, access to federal courts is only available under specific statutes; thus, any argument of the assurance of the availability of a federal forum no longer exists.¹

Those lawyers who are most particularly concerned with the vindication of individual rights in the District of Columbia express their support for congressional action on this important matter in the near future.

JEFF DEMERATH,
KAREN CHRISTENSEN,

Chairpersons, Division V Steering Committee.

GAIL HIGGINS FOGARTY,
SARI B. MARMUR,

Chairpersons, Division VI Steering Committee.

¹ Although 28 U.S.C. 1331 provides access to federal courts for District residents and visitors, the jurisdictional requirement of \$10,000 amount in controversy creates an inappropriate barrier in cases involving personal rights not easily valued in monetary terms.

SUBCOMMITTEE MARKUP OF H.R. 3343

Mr. MAZZOLI. The subcommittee will come to order, a quorum being present, for the purpose of marking up the bill H.R. 3343.

I appreciate the assistance of the gentleman from Maryland today. He has been a valuable member of our subcommittee and our Full Committee and I happen to serve with the gentleman on our other committee as well, Committee on the Judiciary.

The gentleman has had a chance to review the testimony and his associates have reviewed the testimony and heard the witnesses. Basically, the bill, as the gentleman knows, an effort to restore to the citizens of the District of Columbia the very rights that are now enjoyed by residents of the State of Maryland or the State of Kentucky. We had a series witnesses, as the gentleman knows, ranging from the judiciary to the Corporation Counsel to the local bar, all of whom seem to believe this would be a worthy addition to the statutes. And I would yield to the gentleman for any statements he would have.

Mr. BARNES. The only statement I would have, Mr. Chairman, is that I appreciate your comment about my valuable membership on the committee since this is the first meeting I have ever attended. As a brand new member of the subcommittee, I am delighted to join the subcommittee today officially for my first time and the Full Committee. And I was pleased that as I arrived for my first meeting, Ralph Temple was testifying because he used to provide me leadership when I was practicing law in the District of Columbia and occasionally, when I took on a volunteer case for the ACLU. And so, it seemed appropriate to me that when I would turn to questions relating to law in the District of Columbia and walked in the door that I should see testifying before the committee Mr. Temple, whose contribution to civil liberties in the District of Columbia and in the Nation is really extraordinary. Very few people have made a greater contribution in this city.

I have reviewed, as you indicated Mr. Chairman, the bill and am in full support. And I move that H.R. 3343 be reported favorably to the Full Committee.

Mr. MAZZOLI. The question is on the motion of the gentleman from Maryland. All those in favor signify by saying "aye."

[Chorus of ayes.]

All those opposed, "nay."

[No response.]

The ayes have it and accordingly, the bill will be reported from the subcommittee to the full Committee. I thank very much the gentleman from Maryland and welcome him to the committee.

We now stand adjourned.

[Whereupon, at 10:30 a.m., the subcommittee adjourned.]

COMMITTEE MARKUP OF H.R. 3343

WEDNESDAY, OCTOBER 24, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The committee met, pursuant to notice, at 12 noon, in room H-128, the Capitol, the Honorable Ronald V. Dellums (chairman of the committee) presiding.

Present: Representative Dellums, Delegate Fauntroy, Representatives Mazzoli, Leland, Gray, Barnes, Marks, Fenwick.

Also present: Edward C. Sylvester, Jr., staff director; Elizabeth D. Lunsford, general counsel; James T. Clark, legislative counsel; Robert Brauer, staff assistant; Jack Barthwell, counsel; Harry M. Singleton, minority chief counsel; and Robert Cover, assistant legislative counsel.

The CHAIRMAN. The meeting will come to order. Today we will consider four bills which we hope to take up in the House next week, probably on Wednesday, October 31, a special day for District of Columbia bills we have requested in lieu of our regular Monday district day this week. The speaker has agreed to seek the unanimous consent of the House on Friday on October 26.

I would like to now recognize the gentleman from Kentucky, Mr. Mazzoli, to call up two bills on his Subcommittee on Judiciary, Manpower and Education.

H.R. 3343

Mr. MAZZOLI. Thank you, Mr. Chairman. I would like to call up the bill, H.R. 3343, and move that the committee report it favorably.

[The bill, H.R. 3343, follows:]

[H.R. 3343, 96th Congress, 1st session]

A BILL To permit civil suits under section 1979 of the Revised Statutes (42 U.S.C. 1983) against any person acting under color of any law or custom of the District of Columbia who subjects any person within the jurisdiction of the District of Columbia to the deprivation of any right, privilege, or immunity secured by the Constitution and laws

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) is amended—

(1) by inserting “or the District of Columbia” after “any State or Territory”; and

(2) by adding at the end thereof the following new sentence: “For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.”

SEC. 2. Section 1343 of title 28, United States Code, is amended—

(1) by inserting “(a)” before “The district courts”; and

(2) by adding at the end thereof the following new subsection:

“(b) For purposes of this section—

“(1) the District of Columbia shall be considered to be a State; and

"(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

SEC. 3. The amendments made by this Act shall apply with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after the date of the enactment of this Act.

The CHAIRMAN. Are there any questions?

Mr. MAZZOLI. Mr. Chairman, if I could be recognized for just a minute?

The CHAIRMAN. The gentleman is recognized.

Mr. MAZZOLI. Thank you. Mr. Chairman, H.R. 3343 corrects what I consider to be an oversight in draftsmanship. Section 1983 of title 42 protects the civil rights of an individual in the event of action under color of authority by a local government, and in the writing of 1983 are included the words "State or territory," but in 1972 decision of the Court, the *District of Columbia v. Carter* (409 U.S. 418), somehow the Supreme Court interpreted the words "State or territory" not to include the District of Columbia; so this bill before us, H.R. 3243, would simply make clear, by adding the words "District of Columbia," that the statute section 1983 is meant to include residents of the District of Columbia where there their constitutional rights have somehow been invaded by authority of people employed by local government in the District of Columbia. If there are no questions, Mr. Chairman—

The CHAIRMAN. Are there any questions?

[No response.]

Mr. MAZZOLI. If there aren't, then I would move for its adoption and that it be reported favorably to the House.

The CHAIRMAN. All those in favor of the motion signify by saying aye?

[Chorus of "ayes".]

All opposed?

[No response.]

The ayes have it and the motion is carried.

[Mr. Mazzoli's prepared statement follows:]

[The committee then proceeded to consider other legislation.]

[Subsequently, the committee at 12:15 adjourned.]

PREPARED STATEMENT OF CONGRESSMAN MAZZOLI

Mr. Chairman and Members of the Committee: Let me first thank my colleague, Representative McKinney of Connecticut, the District Committee's Ranking Minority Member, for introducing this important legislation.

Under current law, Section 1983 of Title 42, U.S. Code provides the basic remedy for civil suits against persons, states or territories who abridge the constitutional freedoms of others while acting under color of local law.

In a decision handed down in 1972, the U.S. Supreme Court, in *District of Columbia v. Carter* (409 U.S. 418), held that the District of Columbia was not a State or Territory for the purposes of Section 1983.

Thus, in this landmark case, a citizen of the District of Columbia, whose rights had been infringed upon by persons acting under the color or local law, was found to have no legal right to redress a grievance under Title 42, Section 1983 of the U.S. Code. This fundamental right is secured for every citizen of the States and Territories, including I would note, Puerto Rico, but not for citizens of the nation's Capital.

So the final result is that anyone, whether a District of Columbia resident or visitor to the Capital, who feels that his or her constitutional rights have been denied by the government of the District of Columbia, is without effective remedy.

Section 1983 was designed to allow citizens a neutral federal forum to hear their complaints against local officials back in the nineteenth century. It is under-

standable that federal lawmakers could not have anticipated the advent of Home Rule in the District of Columbia, and, therefore, had no reason to include the District of Columbia under the provisions of Section 1983. H.R. 3343 is designed to correct this oversight.

Today's bill also amends § 1323 of 28 U.S. Code, which gives the federal district courts exclusive jurisdiction of § 1983 cases, to include cases brought against the District of Columbia government.

At the Subcommittee Hearing on this bill in July we heard testimony in favor of this legislation from Judges, Civil Rights Organizations and the Justice Department. Even the District of Columbia government favors giving up its exemption from Section 1983 liability in order to give local citizens the same rights as Americans everywhere.

SUMMARY OF H.R. 3343

Section 1983 of Title 42 U.S.C. provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

H.R. 3343 will amend this section by adding the words, "or the District of Columbia" immediately after the words, "any State or Territory" as they appear in the statute.

The bill will also amend section 1343 (3) of Title 28 which gives the federal district courts jurisdiction of § 1983 actions. This conforming amendment expands district court jurisdiction to include actions brought against the District of Columbia government.

HISTORY AND PURPOSE

Section 1983 is the basic remedy for violations of civil rights by local government authority. Working with section 1343 it provides a right of action in federal court against persons who, acting under color of local law or custom, deprive someone of Constitutional or statutory rights.

Common examples of § 1983 actions involve police brutality and discrimination in government hiring or job promotion. A recent Supreme Court case however, *District of Columbia v. Carter*, held that the District of Columbia was not a, "person, State or Territory" for purposes of § 1983, and that no suits could be brought under that section against the District government. Since the court has held in other cases that municipal governments are liable for their actions under § 1983, the *Carter* case means that the District of Columbia is virtually the only American locality not subject to the civil rights statute.

The most important problem stemming from the *Carter* decision is that it denies District residents and other citizens aggrieved by D.C. government action, the use of the federal courts as a neutral forum.

DISTRICT OF COLUMBIA V. CARTER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-564. Argued November 6, 1972—Decided January 10, 1973

The District of Columbia is not a "State or Territory" within the meaning of 42 U.S.C. § 1983, and the Court of Appeals therefore erred insofar as that court sustained respondent's claims for deprivation of civil rights pursuant to that statute. Pp. 420-433.

144 U.S. App. D.C. 388, 447 F. 2d 358, reversed.

Brennan, J., delivered the opinion for a unanimous Court.

Richard W. Barton argued the cause for petitioner. With him on the brief were *C. Francis Murphy* and *David P. Sutton*.

Warren K. Kaplan argued the cause for respondent. With him on the brief were *Melvin L. Wulf*, *Ralph J. Temple*, and *Robert W. Boraks*.

Mr. Justice Brennan delivered the opinion of the Court.

On February 12, 1969, respondent filed this civil action in the United States District Court for the District of Columbia alleging that in 1968 Police Officer John R. Carlson of the Metropolitan Police Department of the District of Columbia arrested him without probable cause and, while he was being held by two other officers, beat him with brass knuckles. The complaint alleged further that Carlson's precinct captain, the chief of police, and the District of Columbia each had negligently failed to train, instruct, supervise, and control Carlson with regard to the circumstances in which an arrest may be made and the extent to which various degrees of force may be used to effect an arrest. Respondent sought damages against each defendant upon several theories, including a common-law theory of tort liability and an action for deprivation of civil rights pursuant to 42 U.S.C. § 1983, which provides:¹

"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 citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at a law, suit in equity, or other proper proceeding for redress."

The District Court dismissed the complaint against all defendants without opinion.² On appeal, the United States Court of Appeals for the District of Columbia circuit reversed, holding that the allegations of the complaint were sufficient to state causes of action under both the common-law and federal statutory theories of liability. *Carter v. Carlson*, 144 U.S. App. D.C. 388, 447 F. 2d 358 (1971). In sustaining respondent's claims under § 1983, the court held that "[a]cts under color of the law of the District of Columbia are under color of the law of a 'State or Territory' for purpose of § 1983." *Id.*, at 391 n. 3, 447 F. 2d, at 361 n. 3. We granted certiorari. 404 U.S. 1014. For the reasons stated below, we hold that the District of Columbia is not a "State or Territory" within the meaning of § 1983. We therefore reverse the judgment of the Court of Appeals insofar as the judgment sustained respondent's claims under § 1983.³

¹ Ku Klux Klan Act of 1871, Act of Apr. 20, 1871, § 1, 17 Stat. 13, Rev. Stat. § 1979, 42 U.S.C. § 1983.

² Officer Carlson was never found for service of process. The precinct captain and police chief moved to dismiss the complaint on the ground that it failed to state a claim for which relief could be granted. Their supporting memorandum argued that no tort on their part had been committed, and that in any event they were protected by the doctrine of official immunity. The District of Columbia moved to dismiss the complaint for failure to state a claim, and also on the ground of sovereign immunity.

³ We therefore have no occasion to determine whether, as urged by petitioner, the District is not a "person" for the purpose of 42 U.S.C. § 1983. In addition, we intimate no view on the merits of respondent's claims insofar as they are predicated on other theories of liability.

Whether the District of Columbia constitutes a "State or Territory" within the meaning of any particular statutory or constitutional provision depends upon the character and aim of the specific provision involved.⁴ Indeed, such "[w]ords generally have different shades of meaning, and are to be construed if reasonably possible to effectuate the intent of the lawmakers; and this meaning in particular instances is to be arrived at, not only by a consideration of the words themselves, but by considering, as well, the context, the purposes of the law, and the circumstances under which the words were employed." *Puerto Rico v. The Shell Co. (P. R.), Ltd.*, 302 U.S. 253, 258 (1937); see *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 86, 87-88 (1934); *Atlantic Cleaners & Dyers v. United States*, 286 U.S. 427, 433 (1932).

The Court of Appeals' conclusion that the District of Columbia is a "State or Territory" for the purpose of § 1983 was premised almost exclusively upon this Court's earlier determination that "the District of Columbia is included within the phrase 'every State and Territory'" as employed in 42 U.S.C. § 1982. *Hurd v. Hodge*, 334 U.S. 24, 31 (1948).⁵ At first glance, it might seem logical simply to assume, as did the Court of Appeals, that identical words used in two related statutes were intended to have the same effect. Nevertheless, "[w]here the subject matter to which the words refer is not the same in the several places where they are used, or the conditions are different, or the scope of the legislative power exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law" *Atlantic Cleaners & Dyers v. United States*, *supra*, at 433. And the logic underlying the Court of Appeals' assumption breaks down completely where, as here, "there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed . . . with different intent." *Ibid.*

Section 1982, which first entered our jurisprudence as § 1 of the Civil Rights Act of 1866, Act of Apr. 9, 1866, 14 Stat. 27, provides:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

This provision was enacted as a means to enforce the Thirteenth Amendment's proclamation that "[n]either slavery nor involuntary servitude . . . shall exist within the United States, or any place subject to their jurisdiction." See *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 437-438 (1968). "As its text reveals, the Thirteenth Amendment is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States." *Civil Rights Cases*, 109 U.S. 3, 20 (1883); see *Griffin v. Breckenridge*, 403 U.S. 88, 105 (1971); *Jones v. Alfred H. Mayer Co.*, *supra*, at 437-440; *Clyatt v. United States*, 197 U.S. 207, 216, 218 (1905). Thus, it cannot be doubted that the power vested in Congress to enforce this Amendment includes the power to enact laws of nationwide application.

Moreover, like the Amendment upon which it is based, § 1982 is not a "mere prohibition of State laws establishing or upholding" racial discrimination in the sale or rental of property but, rather, an "absolute" bar to *all* such discrimination, private as well as public, federal as well as state. Cf. *Jones v. Alfred H. Mayer Co.*, *supra*, at 413, 437. With this in mind, it would be anomalous indeed if Congress chose to carve out the District of Columbia as the sole exception to an act of otherwise universal application. And this is all the more true where, as here, the legislative purposes underlying § 1982 support its applicability in the District. The dangers of private discrimination, for example, that provided a focal point of Congress' concern in enacting the legislation,⁶ were, and are, as present in the District of Columbia as in the States, and the same considerations that led Congress to extend the prohibitions of § 1982 to the Federal Government apply with equal force to the District, which is a mere instrumentality of

⁴ Compare *Hurd v. Hodge*, 334 U.S. 24 (1948); *Talbot v. Silver Bow County*, 139 U.S. 438 (1891); *Geofroy v. Riggs*, 133 U.S. 258 (1890); *Callan v. Wilson*, 127 U.S. 540 (1888), with *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Wight v. Davidson*, 181 U.S. 371 (1901); *Hepburn v. Ellzey*, 2 Cranch 445 (1805).

⁵ The Court of Appeals also cited *Sevell v. Pegelow*, 291 F. 2d 196 (CA4 1961), which, relying upon *Hurd*, also held that the District of Columbia is a "State or Territory" within the meaning of § 1983. That decision is likewise disapproved.

⁶ See *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 422-436 (1968).

that Government. Thus, in the absence of some express indication of legislative intent to the contrary,⁷ there was ample justification for the holding in *Hurd* that § 1982 was intended to outlaw racial discrimination in the sale or rental of property in the District of Columbia as well as elsewhere in the United States.

The situation is wholly different, however, with respect to § 1983. Unlike § 1982, which derives from the Civil Rights Act of 1866, § 1983 has its roots in § 1 of the Ku Klux Klan Act of 1871, Act of Apr. 20, 1871, § 1, 17 Stat. 13. This distinction has great significance, for unlike the 1866 Act, which was passed as a means to enforce the Thirteenth Amendment, the primary purpose of the 1871 Act was "to enforce the Provisions of the Fourteenth Amendment." 17 Stat. 13; see, e.g., *Lynch v. Household Finance Corp.*, 405 U.S. 538, 545 (1972); *Monroe v. Pape*, 365 U.S. 167, 171 (1961); see also Cong. Globe, 42 Cong., 1st Sess., App. 68, 80, 83-85. And it has long been recognized that "[d]ifferent problems of statutory meaning are presented by two enactments deriving from different constitutional sources. See the *Civil Rights Cases*, 109 U.S. 3. Compare *United States v. William*, [341 U.S. 70], with *Screws v. United States*, 325 U.S. 91." *Monroe v. Pape*, *supra*, at 205-206 (opinion of Frankfurter, J.).

In contrast to the reach of the Thirteenth Amendment, the Fourteenth Amendment has only limited applicability; the commands of the Fourteenth Amendment are addressed only to the State or to those acting under color of its authority. See, e.g., *Civil Rights Cases*, *supra*; *United States v. Harris*, 106 U.S. 629 (1883); *United States v. Cruikshank*, 92 U.S. 542 (1876). The Fourteenth Amendment itself "erects no shield against merely private conduct, however discriminatory or wrongful." *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948); see also *United States v. Price*, 383 U.S. 787 (1966); *Evans v. Newton*, 382 U.S. 296 (1966); *Hodges v. United States*, 203 U.S. 1 (1906). Similarly, actions of the Federal Government and its offices are beyond the purview of the Amendment. And since the District of Columbia is not a "State within the meaning of the Fourteenth Amendment, see *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Shelley v. Kraemer*, *supra*, at 8; *Wight v. Davidson*, 181 U.S. 371, 384 (1901), neither the District nor its officers are subject to its restrictions.⁸

Like the Amendment upon which it is based, § 1983 is of only limited scope. The statute deals only with those deprivations of rights that are accomplished under the color of the law of "any State or Territory."⁹ It does not reach purely private conduct and, with the exception of the Territories,¹¹ actions of the Federal Government and its officers are at least facially exempt from its proscriptions. Thus, unlike the situation presented in *Hurd*, the instant case does not involve a constitutional provision and related statute of universal applicability. This being so, the considerations that led to an expansive reading of § 1982 so as to include the District of Columbia simply do not apply with respect to § 1983. We must therefore examine the legislative history of § 1983 to determine whether the purposes for which the Act was adopted support a similarly broad construction.

II

Any analysis of the purposes and scope of § 1983 must take cognizance of the events and passions of the time at which it was enacted.¹² After the Civil War

⁷ Although the legislative debate over the 1866 Act did not focus specifically on the District, there are numerous indications that the Act was designed to "extend to all parts of the country." Cong. Globe, 39th Cong., 1st Sess., 322 (Sen. Trumbull); see, e.g., *id.*, at 426, 474.

⁸ This is not to say, of course, that Congress may not proscribe purely private conduct under § 5 of the Fourteenth Amendment. See *United States v. Guest*, 383 U.S. 745, 762 (1966) (Clark, J., concurring); *id.*, at 782-784 (Brennan, J., concurring and dissenting). Cf. *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

⁹ Thus, unlike the situation with respect to § 1982 and the Thirteenth Amendment, inclusion of the District of Columbia in § 1983 cannot be subsumed under Congress' power to enforce the Fourteenth Amendment but, rather, would necessitate a wholly separate exercise of Congress' power to legislate for the District under Art. I, § 8, cl. 17.

¹⁰ It should be observed that, unlike § 1982, which uses the phrase "every State and Territory" as a mere geographical description, the expression "any State or Territory" in § 1983 constitutes a substantive limitation upon the types of conduct that are prohibited.

¹¹ As initially enacted, § 1 of the 1871 Act applied only to action under color of the law of any "State," 17 Stat. 13. The phrase "or Territory" was added, without explanation, in the 1874 codification and revision of the United States Statutes at Large, Rev. Stat. § 1979 (1874). Since the Territories are not "States" within the meaning of the Fourteenth Amendment, see *South Porto Rico Sugar Co. v. Buscaglia*, 154 F. 2d 96, 101 (CA1 1946); *Anderson v. Scholes*, 83 F. Supp. 681, 687 (Alaska 1949), this addition presumably was an exercise of Congress' power to regulate the Territories under Art. IV, § 3, cl. 2.

¹² See generally K. Stampp, *The Era of Reconstruction, 1865-1877* (1965); A. Nevins, *The Emergence of Modern America, 1865-1878* (1927).

ended in 1865, race relations in the South became increasingly turbulent. The Ku Klux Klan was organized by southern whites in 1866, and a wave of murders and assaults was launched against both blacks and Union sympathizers.¹³ Thus, at the opening of the 42d Congress, considerable apprehension was expressed by Republicans about the insecurity of life and property in the South,¹⁴ and on March 23, 1871, President Grant sent a message to Congress requesting additional federal legislation to curb this rising tide of violence. Such legislation was deemed essential in light of the inability of the state governments to control the situation.¹⁵ Five days later, Congressman Shellabarger of Ohio introduced the bill that eventually was to become the Ku Klux Klan Act of 1871.¹⁶

Although there are threads of many thoughts running through the debates on the 1871 Act, it seems clear that § 1 of the Act, with which we are here concerned, governments to enforce their own laws against those violating the civil rights was designed primarily in response to the unwillingness or inability of the state of others.¹⁷ Thus, while the Klan itself provided the principal catalyst for the legislation, the remedy created in § 1 "was not a remedy against [the Klan] or its members but against those who representing a State in some capacity were *unable or unwilling* to enforce a state law," *Monroe v. Pape*, 365 U.S., at 175-176 (emphasis in original). Senator Pratt of Indiana summarized this concern when he said:¹⁸

"[O]f the hundreds of outrages committed upon loyal people through the agency of this Ku Klux organization not one has been punished. This defect in the administration of the laws does not extend to other cases. Vigorously enough are the laws enforced against Union people. They only fail in efficiency when a man of known Union sentiments, white or black, invokes their aid. Then Justice closes the door of her temples."

Similarly, Congressman Hoar of Massachusetts stated:¹⁹

"Now, it is an effectual denial by a State of the equal protection of the laws when any class of officers charged under the laws with their administration permanently and as a rule refuse to extend that protection. If every sheriff in South Carolina refuses to serve a writ for a colored man and those sheriffs are kept in office year after year by the people of South Carolina, and no verdict against them for their failure of duty can be obtained before a South Carolina jury, the State of South Carolina, through the class of officers who are its representatives to afford the equal protection of the laws to that class of citizens, has denied that protection."

To the Reconstruction Congress, the need for some form of federal intervention was clear. It was equally clear, however, that Congress had neither the means nor the authority to exert any direct control, on a day-to-day basis, over the actions of state officials. The solution chosen was to involve the federal judiciary. At the time this Act was adopted, it must be remembered, there existed no general federal-question jurisdiction in the lower federal courts.²⁰ Rather, "Congress relied on the state courts to vindicate essential rights arising under the Constitution and federal laws."²¹ *Zwickler v. Koota*, 389 U.S. 241, 245 (1967). With the

¹³ See Nevins, *supra*, n. 12, at 351. For an appreciation of the nature and character of the Ku Klux Klan as it appeared to Congress in 1871, see S. Rep. No. 1, 42d Cong., 1st Sess. (1871), and the voluminous report of the Joint Select Committee to inquire into the Condition of Affairs in the late Insurrectionary States, published as S. Rep. No. 41, pts. 1-3 and H.R. Rep. No. 22, pts. 1-13, 42d Cong., 2d Sess. (1872).

¹⁴ See Cong. Globe, 42d Cong., 1st Sess., 116-117.

¹⁵ See *id.*, at App. 226.

¹⁶ See Cong. Globe, 42d Cong., 1st Sess., 317.

¹⁷ See, e.g., *id.*, at 154-159 (Sen. Sherman), 322 Cong. Stoughton), 374 (Cong. Lowe), 428 (Cong. Beatty), 516-519 (Cong. Shellabarger), 653 (Sen. Osborn); *id.*, at App. 72 (Cong. Blair), 78 (Cong. Perry), 100-110 (Sen. Pool).

¹⁸ Cong. Globe, 42d Cong., 1st Sess., 505.

¹⁹ *Id.*, at 334.

²⁰ Original "arising under" jurisdiction, pursuant to Art. III, § 2, cl. 1, was vested in the federal courts by § 11 of the Act of Feb. 13, 1801, 2 Stat. 92, but was repealed only a year later by § 1 of the Act of Mar. 8, 1802, c. 8, § 1, 2 Stat. 132. It was not until 1875 that Congress granted the federal courts "original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and arising under the Constitution or laws of the United States. . . ." Act of Mar. 3, 1875, § 1, 18 Stat. 470. The jurisdictional amount has since been raised from \$500 to \$2,000 by the Act of Mar. 3, 1887, § 1, 24 Stat. 552; to \$3,000 by the Act of Mar. 3, 1911, § 24, 36 Stat. 1091; and to \$10,000 by the Act of July 25, 1958, 72 Stat. 415. The provision is now codified as 28 U.S.C. § 1331(a).

²¹ The only exception was § 25 of the Judiciary Act of 1789, 1 Stat. 85, providing for Supreme Court review whenever a claim of federal right was denied by a state court.

growing awareness that this reliance had been misplaced, however, Congress recognized the need for original federal court jurisdiction as a means to provide at least indirect federal control over the unconstitutional actions of state officials.²² Congressman Coburn explained:²³

"The United States courts are further above mere local influence than the county courts; their judges can act with more independence, cannot be put under terror, as local judges can; their sympathies are not so nearly identified with those of the vicinage; the jurors are taken from the State, and not the neighborhood; they will be able to rise above prejudices or bad passions or terror more easily. . . . We believe that we can trust our United States courts, and we propose to do so."

Thus, in the final analysis, § 1 of the 1871 Act may be viewed as an effort "to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies." *Monroe v. Pape*, 365 U. S., at 180.

There was no need, however, to create federal court jurisdiction for the District of Columbia. Even prior to 1871, the courts of the District possessed general jurisdiction over both federal and local matters. Act of Mar. 3, 1863, c. 91, 12 Stat. 762. Thus, the jurisdictional aspects of § 1 of the 1871 Act were entirely superfluous with respect to the District. Moreover, while Congress was unable to exert any direct control over the actions of state officials, it was authorized under Art. I, § 8, cl. 17, of the Constitution to exercise plenary power over the District of Columbia and its officers.²⁴ Indeed, "[t]he power of Congress over the District of Columbia includes all the legislative powers which a state may exercise over its affairs." *Berman v. Parker*, 348 U. S. 26, 31 (1954); see *District of Columbia v. Thompson Co.*, 346 U. S. 100, 108 (1953); *National Insurance Co. v. Tidewater Co.*, 337 U. S. 582, 602 (1949); *Kendall v. United States*, 12 Pet. 524, 619 (1838). And since the District is itself the seat of the National Government, Congress was in a position to observe and, to a large extent, supervise the activities of local officials.²⁵ Thus, the rationale underlying Congress' decision not to enact legislation similar to § 1983 with respect to federal officials—the assumption that the Federal Government could keep its own officers under control—is equally applicable to the situation then existing in the District of Columbia.

It is true, of course, that Congress also possessed plenary power over the Territories.²⁶ For practical reasons, however, effective federal control over the activities of territorial officials was virtually impossible. Indeed, "the territories were not ruled immediately from Washington; in a day of poor roads and slow mails, it was unthinkable that they should be. Rather, Congress left municipal law to be developed largely by the territorial legislatures, within the framework of organic acts and subject to a retained power of veto. The scope of self-government exercised under these delegations was nearly as broad as that en-

²² Thus, as originally enacted, § 1 of the 1871 Act provided that the proceedings authorized by the Act are "to be prosecuted in the several district or circuit courts of the United States. . . ." 17 Stat. 13. This aspect of § 1 is now codified as 28 U.S.C. § 1343(3).

²³ Cong. Globe, 42d Cong., 1st Sess., 460.

²⁴ In pertinent part, Art. I, § 8, cl. 17, of the Constitution provides that Congress shall have power "[t]o exercise exclusive Legislation in all Cases whatsoever, over such District . . . as may . . . become the Seat of Government of the United States. . . ."

²⁵ The District of Columbia police system, for example, was operated under the direction of a board of five commissioners appointed by the President with the advice and consent of the Senate. The statutes creating the metropolitan police system established a network of regulations and reporting requirements that enabled the Federal Government to keep a watchful eye over police conduct. See Act of Aug. 6, 1861, 12 Stat. 320; Act of July 16, 1862, 12 Stat. 578.

Respondent seeks to make much of the fact that, in 1871, Congress established a "territorial" form of government for the District of Columbia, with a governor and legislative assembly, to which the general administration of the affairs of the District was committed. Act of Feb. 21, 1871, 16 Stat. 419. In light of this development, respondent argues, Congress must have intended the word "Territory" in § 1 of the Ku Klux Klan Act to include the District of Columbia. What respondent apparently overlooks, however, is that on June 20, 1874, the very day that the phrase "or Territory" was formally enacted into the revised version of § 1 of the Ku Klux Klan Act, see n. 11, *supra*, Congress also abolished the "territorial" form of government in the District and, in its stead, authorized the President, with the advice and consent of the Senate, to appoint a commission of three members to exercise the power previously vested in the governor and assembly. Act of June 20, 1874, c. 337, 18 Stat. 116.

²⁶ Article IV, § 3, cl. 2, provides: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . ."

joyed by the States. . . ." *Glidden Co. v. Zdanok*, 370 U. S. 530, 546 (1962) ; see also E. Pomeroy, *The Territories and the United States 1861-1890*, p. 92 (1947) ; H. R. Rep. No. 440, 48th Cong., 1st Sess. (1884) ; S. Rep. No. 1249, 49th Cong., 1st Sess. (1886). Thus, although the Constitution vested control over the Territories in the Congress, its practical control was both "confused and ineffective,"²⁷ making the problem of enforcement of civil rights in the Territories more similar to the problem as it existed in the States than in the District of Columbia.²⁸

Moreover, the effort to analogize the District of Columbia to the Territories in this context faces strong theoretical obstacles. The territorial state has aptly been described as "one of pupillage a best." *Nelson v. United States*, 30 F. 112, 115 (Ore. 1887). From the moment of their creation, the Territories were destined for admission as States into the Union, and "as a preliminary step toward that foreordained end—to tide over the period of ineligibility—Congress, from time to time, created territorial governments, the existence of which was necessarily limited to the period of pupillage." *O'Donoghue v. United States*, 289 U.S. 516, 537 (1933) ; see *McAllister v. United States*, 141 U.S. 174, 188 (1891). Thus, in light of the transitory nature of the territorial condition, Congress could reasonably treat the Territories as inchoate States, quite similar in many respects to the States themselves, to whose status they would inevitably ascend.

The District of Columbia, on the other hand, "is an exceptional community . . . established under the Constitution as the seat of the National Government." *District of Columbia v. Murphy*, 314 U. S. 441, 452 (1941). As such, it "is as lasting as the States from which it was carved or the union whose permanent capital it became." *O'Donoghue v. United States*, *supra*, at 538. Indeed, it is "the very heart—of the Union itself, to be maintained as the 'permanent' abiding place of all its supreme departments, and within which the immense powers of the general government were destined to be exercised . . ." *Id.*, at 539. Unlike either the States or Territories, the District is truly *sui generis* in our governmental structure.

With this unique status of the District of Columbia in mind, and in the absence of any indication in the language, purposes, or history of § 1983 of a legislative intent to include the District within the scope of its coverage, the conclusion is compelled that the Court of Appeals erred in holding that the District of Columbia constitutes a "State or Territory" within the meaning of § 1983. Just as "[w]e are not at liberty to see ingenious analytical instruments" to avoid giving a congressional enactment the broad scope its language and origins may require, *United States v. Price*, 383 U. S., at 801, so too are we not at liberty to recast this statute to expand its application beyond the limited reach Congress gave it. This is not to say, of course, that a claim, such as a possible claim against Officer Carlson, of alleged deprivation of constitutional rights is not litigable in the federal courts of the District. See *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U. S. 388 (1971) ; *Bell v. Hood*, 327 U. S. 678 (1946). But insofar as the judgment of the Court of Appeals sustaining respondent's claims rested on § 1983, that judgment must be, and is,

Reversed.

²⁷ E. Pomeroy, *The Territories and the United States 1861-1890*, p. 4 (1947).

²⁸ Moreover, unlike the courts of general jurisdiction in the District of Columbia, which were created under the authority vested in Congress by Art. III, § 1, see *O'Donoghue v. United States*, 289 U.S. 516 (1933), the federal courts in the Territories were established under Art. IV, § 3, cl. 2, see *Glidden Co. v. Zdanok*, 370 U.S. 530 (1962) ; *American Insurance Co. v. Canter*, 1 Pet. 511 (1828). This distinction also has significance for our problem for, unlike judges in the District, territorial judges were appointed for terms of only four years. Rev. Stat. § 1864 (1874). As a result the territorial judges were peculiarly susceptible to local pressures, since their reappointments were often dependent upon favorable recommendations of the territorial legislatures. See Pomeroy, *supra*, n. 27, at 98-102.

EXCERPTS FROM COMMITTEE REPORT

96TH CONGRESS } 1st Session }	HOUSE OF REPRESENTATIVES {	REPORT No. 96-548
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CIVIL SUITS FOR VIOLATIONS OF CIVIL RIGHTS

OCTOBER 24, 1979.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DELLUMS, from the Committee on the District of Columbia, submitted the following

REPORT

[To accompany H.R. 3343]

The Committee on the District of Columbia, to whom was referred the bill (H.R. 3343), to permit civil suits under section 1979 of the Revised Statutes (42 U.S.C. 1983) against any person acting under color of any law or custom of the District of Columbia who subjects any person within the jurisdiction of the District of Columbia to the deprivation of any right, privilege, or immunity secured by the Constitution and laws, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 3343 is to allow civil suits under the Primary Federal Civil Rights Statute (42 U.S.C. 1983) against any person who, acting under the authority of the laws of the District of Columbia, deprives another person of his or her statutory or constitutional rights. This legislation is necessary in order to give citizens of the District of Columbia rights equal to those of citizens in the states and territories of the United States.

BACKGROUND

Section 1983 (originally called the Ku Klux Klan Act of 1871) was enacted to provide a measure of Federal control over state and territorial officials who were reluctant to enforce state laws against persons who violated the rights of newly freed slaves and union sympathizers. That Act created a right of action in Federal court against local government officials who deprive citizens of their constitutional rights by failing to enforce the law, or by unfair and unequal enforcement. Thus, an aggrieved citizen is provided a neutral Federal forum in which to air his complaint, instead of being forced to sue his state officials in State Courts.

In recent years, Supreme Court decisions have extended the protection of Section 1983 to every United States possession or territory, including Puerto Rico. In the landmark case of *Monell v. City of New York* (426 U.S. 658; June 6, 1978), the court held that municipal governments and their officers could also be liable under Section 1983 for actions which violated the civil rights of persons within their jurisdiction.

That decision leaves the District of Columbia government and its officers as the only persons in the United States or its territories who are not subject to Section 1983 liability.

NEED FOR LEGISLATION

In *District of Columbia v. Carter* (409 U.S. 418 (1972)), the Supreme Court held that the District of Columbia was not a "state or territory" within the meaning of Section 1983, and that accordingly the Federal district courts were without jurisdiction to entertain suits by citizens of the District against District officials based upon violations of rights guaranteed to citizens of the District by the United States Constitution or Federal law.

The court therefore dismissed Mr. Carter's claim under Section 1983 against the District's Police Force for an illegal beating administered while he was under arrest.

In handing down the *Carter* decision, the court noted that when Congress in 1871 enacted Section 1983, it was concerned that state courts could not always provide an adequate forum for the vindication of Federally-protected rights. In 1871, however, the Federal courts in the District of Columbia operated as local courts as well as Federal ones. Also, the local government at that time was directly subject to Federal control so that no need existed for separate Federal court oversight of local government actions. H.R. 3343 is therefore a response not only to the *Carter* decision, but to the many changes that have taken place in the District of Columbia Government over the years.

In 1970, Congress enacted the District of Columbia Court Reform and Criminal Procedure Act (84 Stat. 472; D.C. Code, Tit. 11, Sec. 101 et seq.) which established an independent court system with exclusive jurisdiction over local matters. Then in 1973 the Home Rule Act (87 Stat. 774; D.C. Code, Tit. 1, Sec. 101 et seq.) established a Mayor and City Council with executive and legislative authority over District affairs. Today, instead of having Congress legislate every minor law for the local citizens, the District is in most respects a viable community with the same problems, resources and government structures that operate in every other locale. A major difference however, is that if a local citizen, or a visitor to the area, believes that his civil rights have been violated by the District Government, he cannot sue in Federal District of Columbia courts, under Section 1983.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1 of H.R. 3343 adds the words, "or the District of Columbia" after the words "any State or Territory" in Section 1983. This change simply adds the District of Columbia to those jurisdictions covered by the statute, so that District officials and other persons would become

subject to Section 1983 liability for civil rights violations in the District of Columbia.

Section 1 of the bill also adds a clause to Section 1983 providing that "any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia." This addition is necessary because liability under Section 1983 is predicated upon a local official's actions under local laws. In the District of Columbia however, many of the local statutes were passed as Acts of Congress to be applied by the District government. This change makes it clear that only the District of Columbia, and not the U.S. Government, is liable for Section 1983 violations committed by District officials acting under authority of those U.S. statutes.

Section 2. Section 1343 of Title 28 United States Code gives the Federal district courts original jurisdiction of suits involving Acts of Congress providing for the relief of Civil Rights violations. Subsection 3 of that law paraphrases the wordings of Section 1983 but uses only the word "State" instead of "any State or Territory". Hence, Section 2 of H.R. 3343 makes two conforming amendments to this entire section (1) providing that for Section 1343 purposes "the District of Columbia shall be considered to be a State"; and (2) adding a provision that "any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia." This change makes it clear that the Federal courts shall have jurisdiction of Section 1983 actions against District of Columbia officials acting under authority of local laws, even if those laws were passed by Congress.

Section 3 of H.R. 3343 provides that the liability of the District of Columbia under these amendments shall apply only to deprivations of civil rights which occur after the date of enactment of this legislation.

HEARING

H.R. 3343 was introduced on March 29, 1979 by Mr. McKinney with several co-sponsors, and was referred to the Committee on the District of Columbia. The Judiciary Committee agreed to waive any jurisdictions on this bill as it involved only a District of Columbia matter.

A hearing was held by the Subcommittee on Judiciary, Manpower and Education on July 19, 1979. Testimony in favor of the legislation was presented by members of the Committee; by the Assistant Attorney General, Civil Rights Division, Department of Justice; by representatives of the District of Columbia Court of Appeals, of the D.C. Superior Court and the D.C. Bar; of the American Civil Liberties Union; and officials of the District of Columbia government. No opposition has been presented to the legislation, and the District of Columbia's position is that expansion of local government liability is necessary in order to give citizens of the District rights equal to those of citizens in the states and territories of the United States.

H.R. 3343 was approved by the Subcommittee as introduced.

COMMITTEE VOTE

The Committee, on October 24, 1979, approved H.R. 3343 by voice vote.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

SECTION 1797 OF THE REVISED STATUTES OF THE UNITED STATES

TITLE XXIV. CIVIL RIGHTS

* * * * *

SEC. 1799. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory *or the District of Columbia*, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. *For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.*

SECTION 1343 OF TITLE 28, UNITED STATES CODE

CHAPTER 85—DISTRICT COURT; JURISDICTION

* * * * *

§ 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) *For purposes of this section—*

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

[Subsequently the following report from the Congressional Budget Office was received for the record:]

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., October 24, 1979.

Hon. RONALD V. DELLUMS,
Chairman, Committee on the District of Columbia, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 3343, a bill to permit civil suits under section 1979 of the Revised Statutes (42 U.S.C. 1983) against any person acting under color of any law or custom of the District of Columbia who subjects any person within the jurisdiction of the District of Columbia to the deprivation of any right, privilege, or immunity secured by the Constitution and laws, as ordered reported by the House Committee on the District of Columbia, October 24, 1979.

Based on this review, it is expected that no additional cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RIVLIN, Director.

THE HOUSE OF REPRESENTATIVES
IN SENATE CONFERENCE

REPORT
OF THE

COMMISSIONERS OF THE GENERAL LAND OFFICE
IN RESPONSE TO A RESOLUTION OF THE HOUSE OF REPRESENTATIVES

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