OVERVIEW – SECTION 1983 LITIGATION

I. Civil Rights Act of 1871 – codified at 42 U.S.C. § 1983

A. Text of Statute: **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**, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. 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.

B. Goals of the Statute – legislative history.

C. Acting Under "Color of State Law"

1. Definition – State Action Doctrine

a. Easy case – conduct by police officer or other official enforcing the law (making an arrest or taking other law enforcement action). In such cases, there is no issue with regard to state action.

b. Difficult case – conduct of private, non-state actors causes injury, but the plaintiff alleges some connection to the state. The only way to bring the conduct of private, non-state actors within the reach of Section 1983 is to allege and prove "such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'" *Tancredi v. Metropolitan Life Ins. Co.*, 316 F.3d 308, 312 (2d Cir.), *cert. denied*, 539 U.S. 942 (2003) (quoting *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n*, 531 U.S. 288, 295 (2001)).

c. The cases define state action as follows: "[W]hen … (1) the entity acts pursuant to the coercive power of the state or is controlled by the state ("the compulsion test"); (2) when the state provides significant encouragement to the entity, the entity is a willful participant in joint activity with the state, or the entity's functions are entwined with state policies ("the joint action test" or "close nexus test"); or (3) when the entity has been delegated a public function by the state ("the public function test"). *Sybalski v. Independent Group Home Living Program, Inc.*, 546 F.3d 255, 257 (2d Cir. 2008).

2. Applications

a. *Tancredi* – MetLife Insurance Co. converts from a mutual company to a stock company, and plaintiff sues, alleging that the conversion violated the Takings Clause. The conversion is approved by the NY State Superintendent of Insurance. Second Circuit rejects the argument that the conversion constitutes state action: "In the present case, the conduct of which plaintiffs complain is defendants' conversion of MetLife from a mutual company to a stock company. The complaint, however, failed to allege facts that, if established, would show that MetLife's reorganization was conduct that was fairly attributable to the State …. [I]n granting approval, the Superintendent merely found that MetLife met the statutorily mandated standards for such a reorganization and allowed the process to go forward as planned. There is no basis in the complaint's factual allegations for inferring that the State ordered MetLife to convert to a stock company, or that it employed any sort of coercion to control MetLife or induce MetLife to reorganize, or that it became entwined in MetLife's management." *Tancredi*, 316 F.3d at 313.

b. *Carmichael v. City of New York*, 34 F. Supp. 3d 252 (E.D.N.Y. 2014). Court concludes that plaintiff has satisfied the requirement of state action but grants summary judgment on the grounds that plaintiff cannot show causation. "Plaintiff's claim is that the discriminatory provision of services by the NYPD caused Ms. Moore injury. The City argues that state action is lacking by mischaracterizing plaintiff's claim as being that the City 'compelled' Pearson and Hendrix, two criminal non-state actors, to kill Ms. Moore or somehow participated in or delegated aspects of the criminal activity. Ms. Carmichael also is not seeking, as the City argues, to make the City liable for the conduct of private actors who are regulated by the state. Rather, plaintiff's claim addresses injury allegedly caused by the City's discriminatory response to Ms. Moore's disappearance. Therefore, the cases relied upon by defendant addressing non-state actors' conduct that is regulated by the state, … are inapposite." *Id*. at 260.

D. History of Statute – *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978)

1. The term "person" includes municipal corporations/local governments.

a. The Court held: "Local governing bodies, … can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision

officially adopted and promulgated by that body's officers." *Monell*, 436 U.S. at 690.

b. The Court also held: "Moreover, although the touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other § 1983 'person,' by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decision-making channels." *Id*. at 690-91.

c. The foregoing two sentences are the source of much of the litigation against municipalities – how to define "custom" (or "policy" and "practice"), training claims, supervisory indifference claims, and the concept of deliberate indifference, all grew out of the *Monell* decision.

2. However, local governments are only liable for their own acts, not those of their employees.

3. Congress did not intend to hold municipalities liable in *respondeat* for the acts of others.

4. Brennan's analysis of the legislative history.

a. When the bill was considered in Congress, members of the House offered up amendments that would have rendered municipalities liable for the actions of private parties – mainly the KKK – who violated the civil rights of the freed slaves within their jurisdictions: "Let the people of property of the southern States understand that if they will not make the jue and cry and take the necessary steps to put down lawless violence in those States their property will be holden responsible, and the effect will be most wholesome." *Monell*, 436 U.S. at 668 n.16.

b. These amendments were rejected on the grounds that Congress did not believe it could impose liability on municipalities for the acts of others.

c. *Monroe v. Pape*, 365 U.S. 167 (1961), had interpreted this legislative history as reflecting Congress' determination that it could not impose liability on municipalities at all.

d. But Justice Brennan reviewed the entire legislative history and concluded that, while Congress did not intend to impose liability on local governments for the actions of others, including their

employees, Congress did intend to impose liability upon municipalities for their own acts.

II. Immunities – Availability/Scope

A. Section 1983 incorporates immunities that existed at the time.

B. Prosecutors are entitled to absolute immunity from Section 1983 claims based on their conduct as advocates in an ongoing criminal proceeding.

1. *Imbler v. Pachtman*, 424 U.S. 409 (1976).

2. *Van de Kamp v. Goldstein*, 555 U.S. 335 (2009) – extends absolute immunity to senior prosecutors for failure to train or supervise. Also extends immunity to "administrative" office functions directly related to prosecutions. Plaintiff had sued the Los Angeles County DA's office, claiming that the DA failed to implement an information management system to allow prosecutors to access information about informants (here, information that a jailhouse informant had previously given information to the DA and had received reduced sentences as a result). The Court held: "Those claims focus upon a certain kind of administrative obligation--a kind that itself is directly connected with the conduct of a trial. Here, unlike with other claims related to administrative decisions, an individual prosecutor's error in the plaintiff's specific criminal trial constitutes an essential element of the plaintiff's claim. The administrative obligations at issue here are thus unlike administrative duties concerning, for example, workplace hiring, payroll administration, the maintenance of physical facilities, and the like." *Id*. at 344.

3. *Warney v. Monroe County*, 587 F.3d 113 (2d Cir. 2009) – prosecutor who delayed disclosing post-conviction DNA test results for seventy-two days was entitled to absolute immunity. Second Circuit held that absolute immunity applies when "there is pending or in preparation a court proceeding in which the prosecutor acts as an advocate." *Id*. at 123. In addition, the court recognized that "it is unhelpful to ascertain the prosecutors' functional role by isolating each specific act done or not done." *Id.*

4. Detective investigators or police officers undertaking assignments from prosecutors during a pending criminal proceeding "are entitled to the same degree of immunity as [the district attorney] himself for their activities while assisting with the investigation and prosecution" of a case. *Hill v. City of New York*, 45 F.3d 653, 660 (2d Cir. 1995).

5. Exceptions to absolute immunity

a. Acts undertaken in "investigative" capacity. Courts employ the "functional" approach. *Van de Kamp*, 555 U.S. at 343 ("To decide

whether absolute immunity attaches to a particular kind of prosecutorial activity, one must take account of the 'functional' considerations discussed above," i.e., is the function at issue one that is "intimately associated with the judicial phase of the criminal process" or one that is typically performed by investigators or police officers prior to commencement of judicial proceedings).

b. Out-of-court statements to the news media are entitled to qualified immunity. *Buckley v. Fitzsimmons*, 509 U.S. 259, 277 (1993).

C. Witnesses are entitled to absolute immunity from all claims arising out of, or relating to, their testimony in court.

1. *Briscoe v. LaHue*, 460 U.S. 325 (1983).

2. *Rehberg v. Paulk*, --- U.S. ---, 132 S. Ct. 1497 (2012).

3. Law enforcement witnesses – entitled to the same absolute immunity for testimony as civilian witnesses.

4. Absolute immunity does not extend to all conduct by witnesses in connection with a criminal prosecution.

D. Individual police officers are entitled to qualified immunity.

1. Overview of relevant cases. "The doctrine of qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. The protection of qualified immunity applies regardless of whether the government official's error is 'a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.'" *Id.* (citations omitted).

2. U.S. Supreme Court emphasizes the need to resolve qualified immunity defense as early as possible: "Because qualified immunity is an immunity from suit rather than a mere defense to liability … it is effectively lost if a case is erroneously permitted to go to trial." *Id*. at 231 (citations omitted). The "driving force behind creation of the qualified immunity doctrine was a desire to ensure that 'insubstantial claims' against government officials [will] be resolved prior to discovery." *Id*. at 231-32. "Accordingly, we repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation." *Id*. (citations omitted).

3. Specific applications – *Garcia v. Doe*, 779 F.3d 84 (2d Cir. 2015).

E. Municipalities are not entitled to assert immunity defense. *Owen v. City of Independence, Mo*., 445 U.S. 622 (1980).

F. Others entitled to immunities – medical examiners, lab technicians. *Newton v. City of New York*, 738 F. Supp. 2d 397 (S.D.N.Y. 2010).

III. Requirements of Causation and Injury

A. Causation – Plaintiff must show that alleged misconduct by officials acting under color of state law proximately caused injury.

B. Intervening Causes – *Townes* line of cases; concept of independent decision-maker who breaks chain of causation.