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Kenneth F. Khoury

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FEDERAL EQUITABLE RELIEF IN MATTERS COLLATERAL TO STATE CRIMINAL PROCEEDINGS

I. INTRODUCTION

In 1971 the Supreme Court decided six cases involving requests for federal equitable intervention in pending state criminal trials. These cases, known as the "Younger Sextet," opened a Pandora's box of legal problems for lower federal courts. In the principle case, Younger v. Harris, the Court found that based on "public policy," a federal district court should not enjoin a pending state criminal prosecution, despite the unconstitutionality of the state statute being enforced, except under very special circumstances. The Court's "public policy" considerations rested on two grounds. First, the Court noted that:

[under] the basic doctrine of equity jurisprudence . . . courts of equity should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief.

Secondly, the Court concluded that, in the exercise of comity, federal courts should have the "proper respect for state functions."

In Samuels v. Mackell, the Court brought the Younger rationale to bear in a suit for an injunction against a state criminal proceeding to enforce a New York criminal anarchy statute, or in the alternative, for a declaratory judgment that the statute was unconstitutional. Mr. Justice Black, writing for the majority, noted that the appellants were indicted by the New York courts and therefore Younger itself was sufficient authority to deny the prayer for an injunction. As to the declaratory judgment, the Court concluded that it

4. Id. at 43.
5. Id. at 49.
6. Id. at 43-44. Citing the landmark case on the subject, Fenner v. Boykin, 271 U.S. 240 (1926), Mr. Justice Black concluded that irreparable injury by itself was not enough unless it was "'both great and immediate.' " 401 U.S. at 46.
7. 401 U.S. at 44. The Court referred to this notion of "comity" as essential to what it termed "Our Federalism." Id. Basic to this consideration is the recognition that "state courts share with federal courts an equivalent responsibility for the enforcement of federal rights, a responsibility one must expect they will fulfill." Schlesinger v. Councilman, 420 U.S. 738, 755-56 (1975).
9. Id. at 68.
10. Id. at 68-69.
would "result in precisely the same interference with and disruption of state proceedings that the long-standing policy limiting injunctions was designed to avoid."\(^{11}\)

The facts and the remedy sought in all the cases comprising the "Younger Sextet" were similar.\(^{12}\) This uniformity did not allow the Court to fully delineate the scope of the principles set forth in its decisions. As a result, clear guidelines and exceptions were not provided,\(^{13}\) and several complex questions were left unanswered.\(^{14}\)

One such question was whether a federal court may grant equitable relief directed, not at a pending state criminal proceeding as in the Younger Sextet, but at matters collateral, ancillary or incident to the criminal proceeding. Although cases of this nature are rare, varying interpretations of Younger's application to such proceedings have emerged in the United States Courts of Appeals. Some circuits have strictly interpreted Younger as barring only injunctions that would halt the state criminal prosecution. These circuits, in

11. Id. at 72.
13. The Court found that the requirement of irreparable injury could only be satisfied by two situations. First there may be allegations of bad faith and harassment on the part of the state prosecuting officials, as typified by Dombrowski v. Pfister, 380 U.S. 479 (1965) (state prosecutions brought with no expectation of valid convictions against a civil rights organization—an extreme case). At the other end of the spectrum the Court noted that "the cost, anxiety, and inconvenience of having to defend against a single criminal prosecution . . ." brought in good faith, would not justify federal intervention. 401 U.S. at 46. The applicability of Younger to less extreme cases was not dealt with by the Court. Second, the Court noted that there may be "extraordinary circumstances in which the necessary irreparable injury can be shown even in the absence of the usual prerequisites of bad faith and harassment." Id. at 53. As its only example of an extraordinary circumstance the Court lists a statute "'flagrantly and patently violative of express constitutional prohibitions . . .'" Id., quoting Watson v. Buck, 313 U.S. 387, 402 (1941).
14. Among these questions were Younger's applicability to quasi-criminal state proceedings, Huffman v. Pursue, Ltd., 420 U.S. 592 (1975) (Younger applicable to state civil property seizures in connection with nuisance statute); Anonymous v. Association of the Bar, 515 F.2d 998 (5th Cir. 1973) (cert. denied, 44 U.S.L.W. 3204 (U.S. Oct. 7, 1975) (No. 75-10) (Younger applicable to bar grievance committee proceeding, a "quasi-judicial body" performing the same function that the state court handled in the past), or to state civil proceedings, Polk v. State Bar, 480 F.2d 998 (5th Cir. 1973) (Younger not applicable where state bar disciplinary action will not lead to disbarment and hence not connected to enforcement of criminal laws); see Comment, The Extension of Younger v. Harris to Non-Criminal Cases, 8 Creighton L. Rev. 454 (1974). Also in question was Younger's effect where the state criminal proceeding was merely threatened. In Steffel v. Thompson, 415 U.S. 452 (1974), the Court decided that "[w]hen no state [criminal] proceeding is pending . . . considerations of equity, comity and federalism have little vitality . . ." Id. at 462. The decision was followed in Ellis v. Dyson, 421 U.S. 426 (1975).
particular the Third and Fifth, have not construed Younger to bar the federal district court from granting the equitable relief that is not directed at the criminal proceeding. Other circuits, relying on the doctrine of comity, have read "criminal proceedings" as "criminal processes" and have blanketedly refused to grant equitable relief where the subject is in any way related to a state's enforcement of its criminal laws.

In O'Shea v. Littleton, the Supreme Court, in dicta, indicated that it favored a broad application of the Younger doctrine to encompass the collateral matters of setting bond, sentencing and payment of jury fees. A year later, however, in Gerstein v. Pugh, the question of Younger's applicability to a matter ancillary to a state criminal proceeding was again at issue. In reviewing the validity of a federal injunction requiring a probable cause hearing in state criminal actions, the Court indicated its approval of a more limited application of Younger in this area.

More recent Supreme Court decisions, however, have reaffirmed Younger's vitality and expanded its application to other areas. In Huffman v. Pursue, Ltd., for example, the Court applied Younger to a civil property seizure in connection with a state obscenity statute. The Court deferred to the state's important interest in enforcing the obscenity statute, refusing to restrict Younger to purely criminal cases. In Schlesinger v. Councilman, the Court applied the Younger doctrine to a suit by a serviceman to enjoin his court martial proceedings. Although the "demands of federalism" were not present because no state proceeding was involved, the Court found that the Army was in effect a separate society, much like a state, and the doctrine of comity should apply. In Hicks v. Miranda, the Court held that Younger comity principles applied where the plaintiff filed suit in federal court challenging a state obscenity statute, and was subsequently prosecuted under that statute in state court. However, the Court has not squarely faced the issue of whether Younger applies to grants of federal equitable relief in a matter collateral, ancillary or incident to a state criminal proceeding. This Note will analyze this issue in view of the different circuit court interpretations, as well as the conflicting Supreme Court considerations.

17. Id. at 108 n.9.
19. Id. at 599.
21. Id. at 746.
22. 95 S. Ct. 2281 (1975).
23. Id. at 2292. Among other decisions dealing with Younger in the same term were: Doran v. Salem Inn, Inc., 95 S. Ct. 2561 (1975) ($500 per day fine constitutes sufficient irreparable harm to warrant preliminary injunction unless criminal proceedings were subsequently instituted); Ellis v. Dyson, 421 U.S. 426 (1975) (Younger not applicable where state prosecution was merely threatened); Kugler v. Helfant, 421 U.S. 117 (1975) (testimony allegedly coerced by New Jersey Superior Court judges forming basis of prosecution ultimately appealable to same court held not irreparable harm); Sosna v. Iowa, 419 U.S. 393 (1975) (Court willing to hear argument on applicability of Younger to dismissal of divorce petition).
II. Before O'Shea

The Third Circuit in Lewis v. Kugler\(^{24}\) decided the first case after Younger to deal with the issue of whether federal courts could grant injunctive relief in matters collateral to state criminal proceedings. The court reversed a district court dismissal of a prayer for injunctive and declaratory relief directed at the New Jersey State Police. The plaintiffs had brought a civil rights class action under the Civil Rights Act\(^{25}\) against the New Jersey Attorney General alleging that state troopers had engaged in a pattern of "arbitrary stops and unreasonable searches of their persons and their vehicles,"\(^{26}\) merely because plaintiffs were bearded or long haired. Ten of the named plaintiffs were subject to a New Jersey criminal action stemming from these stops and searches, but seventeen were not. As to the ten, the court upheld the dismissal since their situation was controlled by Younger.\(^{27}\) However, with regard to the seventeen not involved in any criminal proceeding, the court remanded to the district court to consider the facts supporting the allegations and, if necessary, to fashion appropriate relief.\(^{28}\) The district court had been concerned that the requested relief would inhibit state law enforcement and dismissed on the grounds that "the principle of comity and the role of federalism"\(^{29}\) required the plaintiffs' claim to be presented to New Jersey courts.\(^{30}\) In reversing, the court of appeals reasoned that Younger had not altered the principle that federal courts should hear cases involving injury to federal constitutional rights. The court found the Younger principle inapplicable "because the bulk of the instant complaint does not seek to interfere with pending state criminal proceedings."\(^{31}\) While recognizing the district court's concern over inhibiting state law enforcement as proper, the court concluded that the broad equitable powers at the district court's disposal were adequate to avoid "endless time-consuming bickering and controversy."\(^{32}\) This decision indicated the court of appeals' determination to construe Younger narrowly and to exercise its equitable powers where the matter did not halt or interfere with a state criminal proceeding.\(^{33}\)

\(^{24}\) 446 F.2d 1343 (3d Cir. 1971).
\(^{25}\) 42 U.S.C. § 1983 (1970). The pertinent provision of the Civil Rights Act of 1871 provides: "Every person who, under color of any statute . . . of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . 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." Id. This statute has been the primary vehicle utilized by plaintiffs to gain entry into federal district court in the cases analyzed in this Note. This is undoubtedly attributable to the breadth of its language, and jurisdictional grant, 28 U.S.C. § 1343 (1970), which does not require a jurisdictional amount.
\(^{26}\) 446 F.2d at 1344.
\(^{27}\) Id. at 1348.
\(^{28}\) Id. at 1349-50.
\(^{30}\) 324 F. Supp. at 1224.
\(^{31}\) 446 F.2d at 1347 n.6.
\(^{32}\) Id. at 1351.
\(^{33}\) In Goode v. Rizzo, 506 F.2d 542 (3d Cir. 1974), cert. granted, 420 U.S. 1003 (1975), the court held that Younger and O'Shea v. Littleton, 414 U.S. 488 (1974), would not necessarily bar
Lewis was subsequently reaffirmed and clarified by the Third Circuit in Conover v. Montemuro. In this civil rights class action, plaintiffs sought equitable relief against the Pennsylvania juvenile intake procedures. Plaintiffs alleged that the procedures violated the equal protection clause because juveniles were denied a probable cause hearing that was afforded adults. It was also alleged that juveniles were denied due process of law because the decision to file a petition of juvenile delinquency was based on a "standardless procedure." The district court dismissed, reasoning that: "The procedure challenged affects persons only when they are brought into the juvenile court process. When this process has begun, the Younger and Samuels cases say, the federal courts must not interfere."

The court of appeals found this reasoning inconsistent with Lewis v. Kugler and a misapplication of Younger. The court stated that Lewis stood for the proposition that "[e]ven if a state prosecution is pending, injunctive or declaratory relief against state officers with respect to violations of federal constitutional rights not . . . halt[ing] or substantially interfer[ing] with a pending prosecution may still be available." The court stressed its narrow interpretation of Younger and Samuels, stating that: "Since a remedy with respect to the intake procedures would not necessarily interfere with the adjudication functions of the Commonwealth's juvenile court, it is therefore not necessarily precluded . . . ." Implicit in the court's analysis was the further consideration that a broad interpretation of Younger was at odds with the spirit of section 1983.

The Fifth Circuit has interpreted Younger in a similar fashion. In Morgan an injunction against unconstitutional police activity in Philadelphia. The court distinguished Younger on the grounds that the injunction would not be directed at criminal prosecutions but at police practices.

41. Id. at 1082. In his concurring opinion, Judge Adams distinguished Younger by noting that, in the instant case, there was no constitutional attack on a state statute which might have effectively brought the criminal prosecution to a halt, and that there was no prayer for "injunctive or declaratory relief against a pending delinquency adjudication." Id. at 1090-91. Instead, the action was characterized as merely seeking a "federal court judgment that holding juveniles without a preliminary hearing . . . is unconstitutional." Id. at 1091.

42. Id. at 1079. In Zwickler v. Koota, 389 U.S 241 (1967), the Court stated that "Congress imposed the duty upon all levels of the federal judiciary to give due respect to a suitor's choice of a federal forum for the hearing and decision of his federal constitutional claims . . . [even though] the rights asserted may be adjudicated in some other forum." Id. at 248; see Lewis v. Kugler, 446 F.2d 1343, 1347 (3d Cir. 1971).

43. This strict interpretation of Younger is significant in a circuit which has taken the lead in expanding it in other areas. In Palaio v. McAuliffe, 466 F.2d 1230 (5th Cir. 1972), the court disregarded any "criminal" or "civil" restrictions on Younger and based its conclusion on whether
v. Wofford, the court decided that Younger considerations would not bar an injunction requiring a hearing to ascertain the amount of restitution a convicted felon must pay the victim of his crime, where such payment was a precondition to probation. The court noted that it had "never intimated that abstention is appropriate where there is no state court prosecution to be interfered with . . . ."

The next year, in Pugh v. Rainwater, a civil rights class action, the Fifth Circuit was again faced with a matter collateral to a state criminal action. Plaintiffs alleged that the Florida criminal justice system deprived those arrested of their constitutional right to a judicial hearing on the issue of probable cause before detention. Under the Florida scheme, a person arrested pursuant to a prosecutor's information was not given such hearing.

The district court found that Younger precluded only the enjoining of the prosecution itself, concluding that an injunction requiring a probable cause hearing was "not in conflict" with Younger because plaintiffs "ask the Court neither to declare unconstitutional a state statute nor to enjoin a prosecution, but instead pray for a declaration of procedural rights and an injunction from the continued denial thereof."

On appeal, the Fifth Circuit upheld the injunction and found the claim "not barred by considerations of federal-state comity" since plaintiffs "sought no relief which would impede pending or future prosecutions . . . ." Echoing the Supreme Court in Fuentes v. Shevin, the court stated: "[W]e have not declined to adjudicate federal questions properly presented merely because resolution of these questions would affect state procedures for handling criminal cases . . . . [T]he relief sought is not 'against any pending or future

the "civil proceeding . . . is an integral part of a state's enforcement of its criminal laws." Id. at 1233; see text accompanying note 19 supra.

44. 472 F.2d 822 (5th Cir. 1973).
45. Id. at 826. In this case Morgan's failure to pay $7,000 in restitution meant he would have to serve a five year sentence for his "receiving stolen goods" conviction. Id. at 824.
46. Id. at 826. The court's use of the word "abstention" here should be taken as a generic term for federal equitable restraint. It was not intended to mean abstention by a federal court to obtain a clearer interpretation of state law by a state court in order to avoid a constitutional question. See Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941).
47. 472 F.2d at 827. A broad interpretation of Younger might find the plaintiff too enmeshed in the state criminal process for a federal court to intervene.
49. Id. at 780.
51. Id.; see note 41 supra. The court subsequently adopted a plan submitted by the Dade County Sheriff which required that persons arrested with or without a warrant be given a prompt preliminary hearing before a magistrate. 336 F. Supp. 490 (S.D. Fla. 1972).
52. 483 F.2d at 781.
court proceedings as such.’ ”\textsuperscript{54} The court characterized plaintiffs' suit as a challenge to “an aspect of the criminal justice system which adversely affects him but which cannot be vindicated in the state court trial” and hence “comity is no bar to his challenge.”\textsuperscript{55} The court found \textit{Younger} not applicable even though an aspect of the state criminal justice system was involved. In those few cases where it has faced the problem, the Fifth Circuit has not hesitated to issue injunctive relief concerning a state criminal trial where the injunction would not halt or interfere with the integrity of the trial.\textsuperscript{56}

Other circuits also have declined to extend the rule of \textit{Younger} to this area. In \textit{Greenmount Sales, Inc. v. Davila}\textsuperscript{57} for example, the district court ordered the city of Richmond to return all allegedly obscene material seized from plaintiff bookstore, and required the bookstore to provide copies at the state trial.\textsuperscript{58} The court reasoned that it had not violated the principles of comity because it did not enjoin the state trial itself.\textsuperscript{59} On appeal, the Fourth Circuit reversed and issued its own judgment which in effect was “not dissimilar” to the district court order: the city was allowed to keep one copy of each document for prosecution purposes.\textsuperscript{60} The circuit court also found that comity was not violated since the district judge had not enjoined the state proceeding itself and therefore “effectively followed the teaching of \textit{Younger}.”\textsuperscript{61}

\textsuperscript{54} 483 F.2d at 781 (emphasis added by court).
\textsuperscript{55} Id. at 782.
\textsuperscript{56} In Peterson v. Talisman Sugar Corp., 478 F.2d 73 (5th Cir. 1973), the Fifth Circuit granted an injunction permitting religious workers and leaders to enter a company-owned migrant labor camp despite the fact that they were being prosecuted in state court for criminal trespass for repeatedly trying to enter the camp. The district court dismissed the action, finding that \textit{Younger} barred any equitable relief where a criminal action was underway. Id. at 87. While the court of appeals conceded that an injunction against the sheriff prohibiting his enforcement of the criminal trespass statute was barred by \textit{Younger}, it found that an injunction directed at the sugar company was not proscribed. Id. at 78. The court reasoned that “the state court prosecution could have no bearing upon whether or not [defendant's] guards continued to deny admission to the plaintiffs.” Id. at 79.

In Jones v. Wade, 479 F.2d 1176 (5th Cir. 1973), suit was brought challenging a Texas law prohibiting desecration of the American flag by a youth who had been arrested twice for having flag patches on his jeans. Both times he was released; the second time the state suspended prosecution pending the outcome of the federal suit. Concluding that \textit{Younger} considerations should not deprive the district court of jurisdiction, the court of appeals stated: “A federal injunction at the pre-prosecution stage causes only minimal disruption of the state's enforcement of its criminal laws, since state prosecutorial machinery has not yet been set in motion.” Id. at 1181. This reasoning can be analogized to a matter collateral to a pending criminal trial and the desire to afford federal relief with only “minimal disruption” of state criminal proceedings.

\textsuperscript{57} 479 F.2d 591 (4th Cir. 1973).
\textsuperscript{59} Id.
\textsuperscript{60} 479 F.2d at 592.
\textsuperscript{61} Id. at 593. The court pointed out that \textit{Younger} “was decided in the context of an injunction issued by the district court preventing a prosecution then pending in the . . . state criminal system.” Id. at 592; cf. Perez v. Ledesma, 401 U.S. 82 (1971) (request to suppress
In another case, *Jones v. Superintendent, Virginia State Farm*, 62 the plaintiff brought a section 1983 action seeking to obtain free transcripts of an unsuccessful state habeas corpus petition. The court found that an indigent defendant must be furnished with a free transcript of his state criminal trials "when a need for a transcript in order to collaterally attack a conviction is shown . . . ." 63 Although the plaintiff at bar failed to show sufficient need for the transcript, the court reasoned that injunctions of this type would "not amount to unwarranted interference" 64 with a pending state criminal action since it would be aimed at correcting an unconstitutional situation. 65

The Seventh Circuit also indicated that it took a strict view of *Younger's* scope. In *Littleton v. Berbling*, 66 black citizens of Cairo, Illinois brought a civil rights class action seeking an injunction against a county magistrate and a county circuit court judge for their alleged unconstitutional practices in setting bond, sentencing, and payment of jury fees. 67 Plaintiffs alleged, *inter alia*, that defendants purposely enforced state criminal laws more harshly against blacks by setting bond in criminal cases according to "an unofficial bond schedule without regard to the facts of a case . . . ." 68

The court of appeals, in reversing the district court's dismissal, 69 found that the complaint alleged sufficient violations of federally protected rights to properly invoke federal jurisdiction. 70 The court found that "*Younger* does not control this sort of case . . . ." 71 primarily because "plaintiffs ha[d] not admission of allegedly obscene material denied because such order would have effectively halted the state criminal proceeding).


63. Id. at 152.

64. The district court's fears of unwarranted interference with state prosecutions, in contravention of *Perez v. Ledesma*, 401 U.S. 82 (1971), note 12 supra, and *Stefanelli v. Minard*, 342 U.S. 117 (1951), note 92 infra, were not persuasive to the court of appeals. 460 F.2d at 152 n.3.

65. 460 F.2d at 152 n.3; see note 41 and text accompanying note 51 supra. In *Fowler v. Alexander*, 478 F.2d 694 (4th Cir. 1973), the Fourth Circuit had an opportunity to clarify its position as to the propriety of federal equitable relief directed at a matter ancillary to a pending state criminal proceeding. The plaintiff sought to challenge the constitutionality of a North Carolina statute assessing costs for witnesses in a criminal proceeding initiated by his complaint. When plaintiff refused to pay on grounds of indigency, he was jailed for one day before a relative paid his witness costs. Since the complaint did not allege that the plaintiff intended to prosecute a suit, the court ruled that he lacked standing to challenge the statute. Had the plaintiff paid the tax and then brought a class action seeking a declaration of unconstitutionality, the Fourth Circuit could have required the plaintiff to initiate a state court action, a procedure favored by the Second Circuit. See notes 87-99 infra and accompanying text. Alternatively, the court could have gone to the merits of the declaratory judgment, since the judgment would not be aimed at terminating a state criminal proceeding. This procedure is favored by the Third and Fifth Circuits. See notes 24-56 supra and accompanying text.


67. 468 F.2d at 393.

68. Id.

69. Id. at 415.

70. Id. at 395.

71. Id. at 408.
sought to enjoin the state from prosecuting anyone, but merely to enjoin the judges from unconstitutionally fixing bail and sentences.\textsuperscript{772} The court, in remanding, left the task of fashioning relief to the discretion of the district court, but indicated that it might include "periodic reports of various types of aggregate data on actions on bail and sentencing and dispositions of complaints."\textsuperscript{773}

The rationale holding \textit{Younger} inapplicable to matters collateral to a state criminal prosecution is based on two grounds: the injunction would not halt the state prosecution, and the relief is directed at correcting an unconstitutional situation.\textsuperscript{74}

Despite the development of the strict interpretation of \textit{Younger} in the Third, Fourth, Fifth and Seventh Circuits, the Second and Ninth Circuits have taken a contrary approach. In \textit{Kinney v. Lenon},\textsuperscript{75} plaintiffs sought equitable relief to declare unconstitutional an Oregon statute that did not permit bail for juveniles.\textsuperscript{76} The Ninth Circuit acknowledged that while neither the injunction nor the declaratory judgment sought would have terminated the pending juvenile proceeding, the interference would be substantial enough to fall under the \textit{Younger} rationale.\textsuperscript{77} The court found that the juvenile court's jurisdiction began as soon as the child was taken into custody and "[a]ny interference at this stage would clearly be at odds with the principles of comity and federalism which underlie \textit{Younger}."\textsuperscript{78}

\textit{Kinney} was the controlling authority in the Ninth Circuit's later decision in \textit{Rivera v. Freeman}.\textsuperscript{79} In that decision the court dealt with an attack on the constitutionality of a California statute that permitted detention of minors up to seventy-two hours without a hearing and without a provision permitting minors to post money bail after the hearing.\textsuperscript{80} The lower court dismissed the action.

The Circuit Court affirmed, finding that \textit{Younger} barred the suit.\textsuperscript{81} The

\textsuperscript{72} Id.; accord, Utz v. Cullinane, 520 F.2d 467, 472 n.9 (D.C. Cir. 1975) (dictum).
\textsuperscript{73} 468 F.2d at 415.
\textsuperscript{74} In Cox v. Turley, 506 F.2d 1347 (6th Cir. 1974), plaintiff alleged that the practice of placing juveniles in the Madison County, Kentucky jail without a hearing before a judicial officer constituted a violation of their constitutional rights. Id. at 1348. The Sixth Circuit reversed the district court finding that the complaint failed to state a claim for federal relief. Id. at 1355. Judge Miller, in his concurring opinion, noted the possible Younger problem assuming the allegations proved to be factual. Echoing the standard argument of the circuits which take a strict view of Younger, he stated that the injunction would be proper even though the state prosecution had yet to be completed because "(a)... the action is not intended as one to enjoin or disrupt the state prosecution, and (b)... the relief sought is essentially to redress the alleged violations of the constitutional rights of the plaintiff..." Id. at 1356.
\textsuperscript{75} 447 F.2d 596 (9th Cir. 1971).
\textsuperscript{76} Id. at 600.
\textsuperscript{77} Id. at 601.
\textsuperscript{78} Id. Compare text accompanying note 37 supra with notes 40-41 supra and accompanying text.
\textsuperscript{79} 469 F.2d 1159 (9th Cir. 1972).
\textsuperscript{80} Id. at 1161-62.
\textsuperscript{81} Id. at 1164-65.
plaintiffs argued that since they did not seek to stay the court proceedings and the suit was aimed at a "procedural incident related to such prosecutions," Younger should not apply. The court found this argument merely "interesting" and bowed to the authority of Kinney and the "longstanding policies of comity and federalism."

The Ninth Circuit has taken a pervasive view of Younger's applicability by considering whether the injunction would interfere with the criminal process rather than the criminal prosecution itself. This is a major distinction between the broad view and the strict view of the Younger principle. In its most recent decision on the subject, however, the Ninth Circuit seemed to break with the previous line of cases by issuing a declaratory judgment in favor of indigent parents who sought court appointed counsel in child dependency cases. The court found that an injunction requiring the state to provide counsel was an unwarranted intervention in the state court process. Thus the court overturned the district court injunction that had halted all cases where an indigent parent was denied counsel. However, the decision was complicated by a long history of state court refusals to hear the matter. Thus, notwithstanding its interpretation of Younger, the court found that plaintiffs had no other forum to litigate this issue and issued a declaratory judgment that legal counsel should be provided at these hearings "whenever an indigent parent, unable to present his or her case properly, faces a substantial possibility of the loss of custody or of prolonged separation from a child."

In Leslie v. Matskin, decided soon after Younger, the Second Circuit refused to order the production of free transcripts of probable cause hearings for indigent defendants. The court noted that the transcripts were otherwise easily obtainable and focused on the effect of the requested order. Noting that

82. Id. at 1164. Compare this outcome with notes 35-37 & 74 supra and accompanying text.
83. 469 F.2d at 1165. In Henkel v. Bradshaw, 483 F.2d 1386 (9th Cir. 1973), the court refused to order a state court to appoint counsel to an indigent in a "show cause" proceeding to determine why the indigent had not paid $150 in child support. Although this was technically a civil proceeding, the court was "concerned with the possible penal outcome of the hearing." Since the defendant could have been imprisoned up to six months, "the interests of the state involved are at least of equal gravity" as in the usual state criminal proceeding. Id. at 1389, quoting Kinney v. Lenon, 447 F.2d 596, 601 (9th Cir. 1971). These factors made the proceeding sufficiently criminal, see text accompanying note 19 supra, for the court to apply Younger to avoid an order which "would be particularly intrusive to Oregon court procedure and 'would clearly be at odds with the principles of comity and federalism which underlie Younger.' " 483 F.2d at 1389.
84. Cleaver v. Wilcox, 499 F.2d 940 (9th Cir. 1974). Although decided after O'Shea v. Littleton, 414 U.S. 488 (1974), the court did not cite that case, finding the circuit's previous decisions and their broad view of Younger to be sufficient.
85. 499 F.2d at 943-44.
86. Id. at 945-46. The court did not order the state to provide counsel to the indigents since the challenged statutes had been amended, thus entitling plaintiffs to counsel.
88. Id. at 312. The suit charged that the Connecticut statute deprived indigents of their constitutional rights by failing to provide the transcripts to assist the defense at trial. Id. at 311.
89. Id. at 311. The court found that under the statute, a free transcript could be obtained by
this case "calls for deference to the state's procedures," the court concluded that federal intervention was not warranted due to an absence of "special circumstances" set forth in Younger.

A few months later, in *Inmates of Attica Correctional Facility v. Rockefeller*, the court again relied upon Younger and the theory of comity to dismiss a civil rights action seeking to enjoin in-prison interrogation of inmates unless "conducted in the presence of the inmate's counsel." The court denied the injunction partly because the interrogations were connected with a state grand jury investigation into the Attica prisoners' revolt. The court reasoned that the order, "in addition to its obvious potential for exacerbating federal-state relations, might constitute an unwarranted intrusion upon the pending state criminal proceeding." These decisions immediately indicated that the Second Circuit's view of the Younger doctrine would be a broad one. The court found Younger to be more than simply a restriction on federal equitable relief directed solely at halting a pending state criminal trial.

the indigent by having his own attorney "appointed a special public defender, or by having a regular public defender appointed solely for the purpose of procuring a free transcript." Id. 90. Id. at 312.

91. Id.; see note 13 supra and accompanying text.

92. 450 F.2d at 312. Prior to Younger, the Second Circuit had also refused to interfere with matters collateral to state criminal proceedings, relying mainly on the authority of *Stefanelli v. Minard*, 342 U.S. 117 (1951). In Stefanelli, the plaintiff sought an injunction to suppress the fruits of an allegedly illegal search and seizure. The Court refused to grant the injunction based on a desire "that the orderly course of judicial proceedings should not . . . be broken up for the piecemeal determination of the issues involved." Id. at 123 n.5. In *McLucas v. Palmer*, 427 F.2d 239 (2d Cir.), cert. denied, 399 U.S. 937 (1970), the court refused to review a state judge's order imposing vast security measures on the criminal trial of a Black Panther. Basing its decision on Stefanelli, the court found federal interference with the state's administration of its criminal justice system to be prohibited in order to uphold the "important rule of federalism." Id. at 241. The court concluded that the relief sought would raise the possibilities of an "unseemly conflict" between state and federal orders or of delays in the state criminal trial, which was "just what Stefanelli meant to avoid." Id. at 242.

93. 453 F.2d 12 (2d Cir. 1971).

94. Id. at 22.

95. Id. at 21.

96. Id. at 22. The disturbance at Attica gave rise to a number of cases in which the Second Circuit applied Younger. In *Inmates of Attica Correctional Facility v. Rockefeller*, 477 F.2d 375 (2d Cir. 1973), the court affirmed the dismissal of a class action by inmates, seeking an injunction to require federal and state officials to investigate and prosecute "persons who allegedly have violated certain federal and state criminal statutes." Id. at 376. The court dismissed the claims against the state officials and pointed out that the elaborate relief sought was "inauditable." Id. at 382. The court concluded that even the recent Seventh Circuit decision in *Littleton v. Berbling*, 468 F.2d 389 (7th Cir. 1972), rev'd sub nom. *O'Shea v. Littleton*, 414 U.S. 488 (1974), was not sufficient authority to warrant the broad relief plaintiffs sought. 477 F.2d at 382-83.

97. 453 F.2d at 22. Note that the plaintiffs were not indicted by the grand jury but were merely witnesses. This typifies the Second Circuit's view of Younger. See text accompanying note 99 infra.
Finally, in Wallace v. Kern,98 (Wallace I), the Second Circuit reversed a preliminary injunction that had ordered the Clerk of the Criminal Term of the Kings County Supreme Court to place on the court calendar all pro se motions filed by inmates of the Brooklyn House of Detention. The court stated that "under the principle known as comity a federal district court has no power to intervene in the internal procedures of the state courts."99 In the Second Circuit's opinion, Younger applied to the whole state criminal process and not merely to state criminal proceedings. The circuit courts' differing opinions as to the scope of Younger in matters collateral, ancillary or incident to a pending state criminal proceeding remained without Supreme Court direction until O'Shea v. Littleton.

III. O'Shea v. Littleton AND ITS EFFECT

In O'Shea v. Littleton,100 plaintiffs sought an injunction against a county magistrate and a county circuit court judge for their purported racially discriminatory practices in setting bond, sentencing and payment of jury fees.101 The Seventh Circuit, in accord with those circuits strictly construing Younger, found that the relief sought would not halt a pending criminal trial and consequently was not barred by Younger.102 The Supreme Court reversed, however, holding that federal courts lacked jurisdiction to hear the suit because the complaint did not allege that any of the named plaintiffs had suffered any injury as a result of any specific unconstitutional act.103 Plaintiffs "failed to satisfy the threshold requirement imposed by Art. III of the Constitution ...."104 Nonetheless, in dicta, the Court assumed that even if the plaintiffs had standing, the injunction would be violative of Younger.105

Mr. Justice White, writing the majority opinion, focused on the remedy that the court of appeals had contemplated: periodic reports of the bond and sentencing actions of the defendants.106 The Court found that this was "nothing less than an ongoing federal audit of state criminal proceedings which would indirectly accomplish the kind of interference that Younger v.

99. Id. at 622. Wallace v. Kern, 499 F.2d 1345 (2d Cir. 1974), cert. denied, 420 U.S. 947 (1975) [hereinafter cited as Wallace II] also stemmed from the conditions in the Brooklyn House of Detention. The district court granted a preliminary injunction ordering that each detainee held for more than six months be given a trial within forty-five days of request, or be released. The court held that this was necessary to correct a continuing deprivation of detainee's sixth amendment rights. The Second Circuit reversed, on the ground that deprivation of a speedy trial should be decided on a case by case basis, not by a sweeping order. 499 F.2d at 1351.
101. Id. at 492.
102. Littleton v. Berbling, 468 F.2d 389, 408 (7th Cir. 1972); see text accompanying notes 66-73 supra.
103. 414 U.S. at 494-96.
104. Id. at 493.
105. Id. at 499.
106. Id. at 500-02. The Seventh Circuit suggested that the injunctive relief granted might include "periodic reports of various types of aggregate data on actions on bail and sentencing and dispositions of complaints." 468 F.2d at 415.
Harris . . . and related cases sought to prevent.\textsuperscript{107} The "interference" consisted of constant interruptions of state proceedings in order to federally adjudicate charges of non-compliance.\textsuperscript{108} This decision indicated a favorable attitude on the part of the Court toward a broad reading of Younger, so as to preclude federal courts from granting injunctive relief in matters collateral to state criminal proceedings.

The Ninth Circuit continued to broadly apply the Younger rationale deriving additional authority for this view from O'Shea. In Cadena v. Perasso,\textsuperscript{109} the court upheld the dismissal of a civil rights class action brought against a municipal judge, stemming from the manner in which he revoked plaintiffs' probation. While before the judge as a result of a new felony charge, plaintiffs' previous probation was revoked without allowing them "assistance of counsel, written notice of the alleged probation violation, the opportunity to be heard, and the opportunity to present witnesses on their own behalf."\textsuperscript{110} The court of appeals, relying upon Younger, concluded that there was "no need for a court of equity to interfere with state criminal proceedings."\textsuperscript{111} In the final sentence of its opinion, the court cited O'Shea for the proposition that federal courts should avoid "'an ongoing federal audit of state criminal proceedings . . . [that] would indirectly accomplish the kind of interference that Younger v. Harris . . . sought to prevent.'"\textsuperscript{112} It was not clear what the court considered a "state criminal proceeding." Under a broad interpretation of Younger, either the revocation of probation or the determination of bail is sufficient involvement in the state criminal process to warrant denial of an injunction.\textsuperscript{113}

The effect of the Court's decision in O'Shea was even more pronounced in the Fifth Circuit. In Gardner v. Luckey,\textsuperscript{114} that circuit altered its prior view. The plaintiffs in a civil rights class action alleged that the procedures of the Florida Public Defender Offices deprived indigent defendants of due process by failing to meet minimal constitutional standards.\textsuperscript{115} Specifically, they alleged that Public Defenders failed to consult with clients, to advise them of their legal rights, or to provide adequate investigation of possible factual and legal defenses. The plaintiffs sought to enjoin the offices from continuing to represent indigents until certain minimal standards were instituted.\textsuperscript{116} The

\begin{itemize}
  \item \textsuperscript{107} 414 U.S. at 500.
  \item \textsuperscript{108} Id.
  \item \textsuperscript{109} 498 F.2d 383 (9th Cir. 1974).
  \item \textsuperscript{110} Id. at 384.
  \item \textsuperscript{111} Id.
  \item \textsuperscript{112} Id., quoting O'Shea v. Littleton, 414 U.S. 488, 500 (1974); see text accompanying note 107 supra.
  \item \textsuperscript{113} See text accompanying notes 37 & 78 supra.
  \item \textsuperscript{114} 500 F.2d 712 (5th Cir. 1974).
  \item \textsuperscript{115} Id. at 713.
  \item \textsuperscript{116} Id. The plaintiffs asserted that excessive case loads caused them to be inadequately defended. Id. In addition, their minimal standards included a request that an attorney from the Defender's Office be required to consult with the accused indigent within forty-eight hours of arrest and to prohibit him from withdrawing except with the court's permission. Id. at 713 n.2.
\end{itemize}
court affirmed the district court's dismissal, noting that "[t]his case bears a strong resemblance to O'Shea v. Littleton." Consequently, the court followed an identical line of reasoning by finding no "case or controversy," since none of the named plaintiffs alleged that they were "injured by the conduct of the Public Defenders." The court then found that certain remedies sought by plaintiffs were barred by Younger. Even when considered in the light of the Fifth Circuit's previous views, the result is not surprising. It is evident that part of the relief sought, namely an injunction barring the Public Defenders from continuing to represent indigents until the constitutional standards could be implemented, would require a halt to the state proceedings. However, previous Fifth Circuit decisions with their narrow reading of Younger do not seem to bar relief for other portions of the complaint.

The court's change of view is apparent from its finding that the "appellants contemplate exactly the sort of intrusive and unworkable supervision of state judicial processes condemned in O'Shea." IV. Gerstein v. Pugh

In Gerstein v. Pugh, the Supreme Court affirmed the Fifth Circuit's holding that hearings to determine probable cause before detention were required by the Constitution. The Court considered the Younger problem in a footnote, approving the district court's reasoning that "claim for relief was not barred by the equitable restrictions on federal intervention in state prosecutions . . . ." The Court distinguished Younger, finding that:

The injunction was not directed at the state prosecutions as such, but only at the legality of pretrial detention without a judicial hearing, an issue that could not be raised in defense of the criminal prosecution.

Since the apparent obfuscation of the law by Gerstein, the Second Circuit, the only circuit that has been active in this area subsequent to that decision, has continued to broadly construe Younger. In Bedrosian v. Mintz,
plaintiffs, indictees in Attica criminal cases and their out-of-state attorneys, alleged that the decision by New York State Supreme Court Justice Ball to appoint only in-state attorneys to represent the Attica defendants was a denial of equal protection. The district court dismissed the action on grounds that matters within the discretion of a state trial judge must be reviewed directly on appeal and not collaterally under the Civil Rights Act. The court could have stood firmly on the district court's finding, but instead relied upon the Younger doctrine and O'Shea to bar injunctive relief, that would "disrupt . . . state criminal proceedings in sharp conflict with the principles" of Younger. In response to plaintiff's argument that federal-state comity, which underlies Younger, was not applicable "since the assignment of counsel is merely a collateral matter in the prosecution," the court pointed out that if a federal court must refrain from staying state prosecutions outright, "how much more reluctant must it be to intervene piecemeal to try collateral issues." Ten days later, in Wallace v. Kern (Wallace III), the Second Circuit provided the most detailed analysis in any circuit to date of the O'Shea-Gerstein dichotomy involving the applicability of Younger to matters collateral to a state criminal proceeding. In that case plaintiffs alleged, inter alia, that bail procedures denied plaintiffs their right to due process. The district court had ordered broad changes in the New York bail system based on extensive findings of fact that revealed that an arrested person might be detained anywhere from forty-five days to fourteen months in some cases as a result of the denial of bail, or the fixing of bail that the detainee could not meet. While setting bail is ordinarily within the judge's discretion, the district court found that two documents regularly used by judges in bail determinations—a New York State Criminal Investigation Information Report (NYSIIS) and a Release on Own Recognizance (ROR) sheet—were often inaccurate and incomplete. The district court found that due to time limitations, in most instances it is not possible to verify facts favorable to a

127. Id. at 397-98. Justice Ball had reasoned that: "(1) the court was unfamiliar with the competence of out-of-state counsel or their understanding of New York law; (2) there were attorneys licensed to practice in New York who were ready and willing to accept assignments; and (3) the expenses involved in transportation, living expenses, accommodations for office space, etc. [for out-of-state counsel] would be an excessive burden upon the taxpayers of New York State depleting the state funds which were intended for the legal defense of the defendants." Id. at 398. New York law leaves assignment of counsel and payment of fees to the trial judge's discretion. N.Y. County Law §§ 722, 722-b (McKinney Supp. 1975).

128. 518 F.2d at 398.

129. Id. at 399.

130. Id. The Court also noted that appellants had failed to show great and immediate irreparable injury, or that they had no adequate remedy at law, since there were several able New York attorneys ready to take up the defense. Id.

131. Id. at 399 n.5.

132. Id., quoting Stefanelli v. Minard, 342 U.S. 117, 123 (1951); see note 92 supra.

133. 520 F.2d 400 (2d Cir. 1975).


135. Id. at 7.

136. Id. at 9-10. The court found the NYSIIS to be inaccurate 75% to 90% of the time. Id.
defendant before the initial bail hearing. As a result, unverified favorable facts were often denied weight. In addition, reasons for bail decisions were rarely entered in the record for later judicial review. Judge Judd's order sought to correct this situation by requiring, *inter alia*, an evidentiary hearing on the bail decision on demand within seventy-two hours.

The court of appeals first considered whether the district court order mandated "a wholesale reform of the New York State bail system which constitutes an untoward interference with the state judicial system and violates established principles of comity and federalism" in conflict with *Younger* and *O'Shea*. Relying upon its prior decisions in *Wallace I* and *II* as barring orders which "constituted an improper intervention in the internal procedures of state courts," the court characterized the order at bar as "federal judicial legislation" that was offensive to the state.

The court further noted that in *Huffman v. Pursue, Ltd.*, the Supreme Court had recently expanded *Younger* to include a civil property seizure by the state that had heavy overtones of a criminal proceeding. The court emphasized language in the Supreme Court's opinion seemingly broadening the reach of *Younger* beyond pending state criminal proceedings to the "state criminal law enforcement process." In addition, the court pointed out that other recent Supreme Court decisions had reaffirmed the policy considerations underlying nonintervention.

Appellants, however, contended that *Younger* was not applicable since plaintiffs "were not seeking interference with a criminal trial or any pending bail application," but were simply seeking a declaration of rights. The court found the mandatory nature of the order, supplanting existing procedures, to be "an interference with the state criminal process in both pending and future bail proceedings." The court concluded that, based on its earlier decision in *Bedrosian v. Mintz* and the recent Supreme Court decision in

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137. Id. at 10.
138. Id. at 15.
139. Id. at 65-66. The order provided in substance that: (1) an evidentiary hearing be had on demand any time after seventy-two hours from the original arraignment, (2) the state have the burden at the preliminary hearing of proving what form of security, if any, would be necessary to secure the defendant's appearance in court and of providing a statement of the reasons why non-monetary conditions of release will not assure defendant's presence at trial, and (3) detainee be provided with a written statement of the reasons for fixing or denying bail. Id. at 65-66.
140. 520 F.2d at 404.
141. See notes 98-99 supra and accompanying text.
142. 520 F.2d at 404. Note that the court used "procedures" and not "proceedings," indicating a broad view of *Younger*’s applicability to the state criminal system. The court had ruled previously that it had "no power" to intervene. *Wallace v. Kern*, 481 F.2d 621, 622 (2d Cir. 1973), cert. denied, 414 U.S. 1135 (1974); see text accompanying note 99 supra.
143. 520 F.2d at 405 n.9.
144. 420 U.S. 592 (1975); see notes 18 & 19 supra and accompanying text.
145. 520 F.2d at 404; see 420 U.S. at 599.
146. 520 F.2d at 404; see notes 18-23 supra and accompanying text.
147. 520 F.2d at 404. Id.
148. 518 F.2d 396 (2d Cir. 1975); see notes 126-32 supra and accompanying text. Bedrosian
Hicks v. Miranda,\textsuperscript{150} the proposition that Younger was applicable only where the federal injunction was directed at a pending state criminal prosecution was unsupportable.\textsuperscript{151}

Appellants argued further that O'Shea was inapplicable in the light of the Supreme Court's decision in Gerstein.\textsuperscript{152} However, the court found that Gerstein was distinguishable both on the law and on the facts from Wallace III.\textsuperscript{153} Rather, the court found that O'Shea was controlling since the injunction in Wallace III would have interfered with state criminal processes to the same extent as the injunction in O'Shea.\textsuperscript{154}

The court emphasized the Court's statement in O'Shea that federal district courts should refrain from issuing orders amounting to an "ongoing federal audit of state criminal proceedings which would indirectly accomplish the kind of interference that Younger v. Harris . . . and related cases sought to prevent."\textsuperscript{155} The order of the district court, particularly in determining the nature of the hearing and fixing of burden of proof,\textsuperscript{156} was deemed such an interference since it permitted a pretrial detainee to claim noncompliance with the order and to proceed to a federal court for an interpretation thereof.

In Gerstein, the order was simple and self-executing.\textsuperscript{157} On the other hand, much had to occur before the order in O'Shea became operative: a member of the vaguely defined class\textsuperscript{158} must be arrested and indicted; and at the setting of the bond, there must be discrimination by the judge against the class member. There are many steps in this procedure that require a federal court to distinguish between discretion and discrimination on the part of the state court judge.\textsuperscript{159} The order in Wallace III was not beset with these problems. The plaintiff class was clearly defined—detainees charged with felonies. The actions needed to comply with the order were clear.\textsuperscript{160} It seems, therefore,
that the injunction in Wallace III was more similar to the one in Gerstein than in O'Shea.

When faced with the argument that the intrusion sought in Wallace III was not as significant as that in O'Shea and closer to that of Gerstein, the Second Circuit did not examine the difference in facts among the three cases and the effect of the relief sought in each. Instead, the court considered the injunction sought by plaintiffs to be a more pervasive intrusion than that in Gerstein because it "did not invite state officials to submit a plan for a bail hearing which would be consistent with due process requirements." It found this to be inconsistent with the admonition in Gerstein that the states be allowed "flexibility and experimentation" in setting up pretrial procedures. Consequently, the court concluded that Gerstein "does not provide assistance to the plaintiffs here but, on the contrary, strengthens the stand of the defendants."

The court overlooked the traditional reasoning in due process cases, as well as the language in Gerstein that the federal courts should provide minimal standards and guidelines within which a state may operate nearly unfettered in its discretion. In cases involving matters collateral to state criminal proceedings there can be significant differences in the remedies sought and the extent of their intrusion. Determining and ordering a minimum standard of legal representation, as requested in Gardner, or

(E.D.N.Y. Feb. 14, 1975) (Judd, J.) (unreported). The nature of the hearing was not intended to be a full scale adversary hearing, but had the purpose of considering all facts which might update and verify the NYSIIS and ROR. Id. at 51.

161. 520 F.2d at 408.
162. 420 U.S. at 123.

163. The court did not continue the quotation to the point where the Supreme Court stated that in some states, existing procedures might satisfy the fourth amendment, but "[o]thers may require only minor adjustment." Id. at 124. Presumably the Court thought that federal courts would determine which systems were not satisfactory and what adjustments were necessary.

164. 520 F.2d at 408.
165. The Supreme Court has consistently demonstrated that it will not hesitate to impose minimal procedural due process safeguards, even where the state has an important interest to protect. See Goss v. Lopez, 419 U.S. 565 (1975) (high school students must be provided with prior notice of charges and the evidence against them, and an opportunity to be heard in their own defense before they may be suspended for any significant period); Wolff v. McDonnell, 418 U.S. 539 (1974) (inmate must be given written notice, an opportunity to be heard and to call witnesses, as well as a written statement of findings of fact and evidence against him before his "good time" credits may be revoked); Gagnon v. Scarpelli, 411 U.S. 778 (1973) (indigent probationers must be given appointed counsel at hearings to determine probation revocation); Morrissey v. Brewer, 408 U.S. 471 (1972) (state may not revoke parole without affording parolee written notice, opportunity to be heard, opportunity to cross-examine adverse witnesses and a written statement of findings of fact); Goldberg v. Kelly, 397 U.S. 254 (1970) (welfare termination requires notice, hearing, cross-examination rights, opportunity to testify and statement of findings).

166. The Court in Gerstein held that "[w]hatever procedure a State may adopt, it must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." 420 U.S. at 124-25 (footnote omitted); see note 123 supra.
167. See notes 114-16 supra.
monitoring the proper level of bail where no arrest or specific discrimination is alleged, as in O'Shea, would require a vague and conjectural federal court order. The guidelines in Wallace III, however, are arguably specific enough to permit a state court to follow them.168

V. THE FUTURE IMPLICATIONS

Without clear Supreme Court direction defining the scope of the Younger rationale and delineating the criteria to apply when federal equitable relief is requested in a matter collateral to a pending state criminal proceeding, the circuit courts will remain divided. This division will probably continue along pre-O'Shea lines, since O'Shea and Gerstein did not solve the problem definitively. Either decision may be criticized as authority on the issue as being mere dicta. In addition, no set of criteria or tests can be distilled from an attempt to harmonize the decisions. As a result, the Third, Fourth, Fifth and Seventh Circuits may continue to favor restricting Younger to injunctions aimed at halting the state proceeding, while the Second and Ninth Circuits may continue to extend the Younger rationale to the entire state criminal process. Unless the Supreme Court addresses the issue and decides in favor of the Gerstein view, the narrow interpretation of Younger will be more difficult to defend, since the recent Supreme Court decisions demonstrate a clear trend towards expanding it beyond its original scope.169

Wallace III is the only decision to deal with the O'Shea-Gerstein dichotomy to date. Notwithstanding the Second Circuit's predisposition towards nonintervention,170 the decision may be a model of what the prevailing view will be in the future. The key consideration, as in Wallace III, will be comity and the traditional equitable requirement of irreparable injury, the two underlying policy reasons in Younger.171 Reliance on the expansion of the Younger doctrine in recent Supreme Court decisions will bolster this trend.172

This application of the Younger principle would have its greatest impact on actions brought under section 1983,173 the statute most frequently used to gain access to federal court in the major cases considered in this Note. If a plaintiff challenged any aspect of the state's criminal system, from arrest through conviction, he would find his suit barred by Younger considerations.174 Dismissals based on Younger would leave only a state forum to decide questions of state deprivation of federal constitutional rights.175 The

168. See note 160 supra.
169. See Huffman v. Pursue, Ltd., 420 U.S. 592 (1975); notes 18-23 supra and accompanying text.
170. See note 92 supra.
171. 520 F.2d at 406.
172. Id. at 404-08; cf. Rondeau v. Mosinee Paper Corp., 95 S. Ct. 2069 (1975).
174. See, e.g., Inmates of Attica Correctional Facility v. Rockefeller, 477 F.2d 375, 382 (2d Cir. 1973); notes 37, 93-99 & 123 supra and accompanying text.
175. Once state remedies are exhausted, the plaintiff may apply for habeas corpus in federal court to vindicate the alleged violation of his constitutional rights. 28 U.S.C. §§ 2254(b), (e) (1970); see Schneckloth v. Bustamonte, 412 U.S. 218, 256 (1973) (Powell, J., concurring); Fay v. Noia,
question then becomes whether this result is contrary to the intent of Congress to provide a federal forum for this purpose.\textsuperscript{176}

It is hoped that the Supreme Court will reverse this trend. To this end, the Court could limit \textit{O'Shea} to the proposition that vague allegations of discriminating state criminal procedures will be insufficient to invoke federal relief, and that the federal court, wherever possible, should provide minimal standards and guidelines for equitable relief.

\textit{Kenneth F. Khoury}
