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## Civil Procedure - Jurisdiction over Consent Decrees - Federal Court Has Power to Enter Consent Decree Signed by Nonparty to Underlying Litigation if Decree's Terms Come within General Scope of Case Made by the Pleadings and if Pleadings State Federal Claim

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1985]

CIVIL PROCEDURE—JURISDICTION OVER CONSENT DECREES—  
 FEDERAL COURT HAS POWER TO ENTER CONSENT DECREE SIGNED  
 BY NONPARTY TO UNDERLYING LITIGATION IF DECREE'S  
 TERMS COME WITHIN GENERAL SCOPE OF CASE MADE  
 BY THE PLEADINGS AND IF PLEADINGS STATE  
 FEDERAL CLAIM

*Sansom Committee v. Lynn* (1984)

Consent decrees give parties to a case and, in some instances, interested nonparties,<sup>1</sup> the opportunity to determine, through negotiation, the terms under which their dispute will be resolved.<sup>2</sup> The parties can save the time, risk, and expense of full litigation, and their negotiated settlement nevertheless attains the status of a judicial act by virtue of the court's approval of the settlement.<sup>3</sup> A court has broad equitable power

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1. See *Sansom Comm. v. Lynn*, 735 F.2d 1535 (3d Cir.), cert. denied, 105 S. Ct. 431 (1984).

2. See *United States v. Armour & Co.*, 402 U.S. 673 (1971). The *Armour* Court set forth the legal principles underlying consent decrees as follows: Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms. The parties waive their right to litigate the issue involved in the case . . . . Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

*Id.* at 681. For a discussion of consent decrees in general, see 1 H. BLACK, A TREATISE ON THE LAW OF JUDGMENTS § 217 (1902); 3 A.C. FREEMAN, A TREATISE ON THE LAW OF JUDGMENTS §§ 1348-1350 (1925); Note, *The Consent Judgment as an Instrument of Compromise and Settlement*, 72 HARV. L. REV. 1314 (1959) [hereinafter cited as Note, *Consent Judgment*]; Annot, 10 A.L.R. FED. 328 (1972); Annot, 69 A.L.R. 2d 755 (1960). For a discussion of the widespread use of consent decrees in the antitrust area, see generally Branfman, *Antitrust Consent Decree—A Review and Evaluation of the First Seven Years Under the Antitrust Procedures and Penalties Act*, 27 ANTITRUST BULL. 303 (1982); Note, *Antitrust Enforcement through Consent Decrees*, 53 HARV. L. REV. 386 (1940); Note, *Consent Decrees in the Enforcement of Federal Anti-Trust Laws*, 46 HARV. L. REV. 885 (1933) [hereinafter cited as Note, *Consent Decrees*]. For a discussion of the use of consent decrees in the civil rights area, see generally Anderson, *The Approval and Interpretation of Consent Decrees in Civil Rights Class Action Litigation*, 1983 U. ILL. L. REV. 579; Sherrin & Abrams, *Developments in Mental Health Law—Equal Protection Challenge to Consent Judgments to Right-to-Treatment Litigation: Are the States Getting More Than They Bargained For?*, 45 ALB. L. REV. 613 (1981). For a discussion of the use of the consent decree in SEC litigation, see generally Gould, *Hail to the Consent Decree*, AM. LAW., Sept. 1980, at 35.

3. See Anderson, *supra* note 2, at 584 (where court approves settlement agreement and offers it to be enforced, agreement gains status of judicial relief). Although they require no adjudication on the merits, consent decrees are generally enforceable in the same ways as other judgments: contempt proceeding, execution sale, mandamus, or suit on the judgment. See Note, *Consent Judgment*,

to adjudicate disputes through consent decrees, allowing flexibility in granting relief tailored to the necessities of the individual case.<sup>4</sup> However, a negotiated settlement whose subject matter is beyond the court's jurisdiction cannot be given the effect of a binding judgment, for the parties by consent cannot confer upon the court the requisite judicial competency to enter a consent decree.<sup>5</sup>

In *Sansom Committee v. Lynn*,<sup>6</sup> a decision that generated three separate opinions,<sup>7</sup> the Third Circuit considered jurisdictional limitations on the permissible scope of a consent decree approved by a federal district court. Writing for the majority, then Chief Judge Seitz held that a federal court could enter a consent decree if its terms came "within the general scope of the case made by the pleadings" and the pleadings stated a federal claim.<sup>8</sup> The majority noted that where these requirements were met, it was irrelevant that the consent decree incorporated essentially state law relief,<sup>9</sup> or that it was signed by a nonparty to the underlying litigation.<sup>10</sup> Judge Becker, who concurred in Chief Judge

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*supra* note 2, at 1317. Consent decrees, like "involuntary" judgments (i.e., judgments that are not a product of the parties' consent), are immune from collateral attack except where the court lacked jurisdiction to enter the decree. *See id.* at 1314-15, 1322. The court's approval of a consent decree will have res judicata effect, preventing relitigation on the claims in the original suit, and on the compromise agreement itself. *See, e.g.,* Pick Mfg. Co. v. General Motors Corp., 80 F.2d 639 (7th Cir. 1935); 2 A.C. FREEMAN, *supra* note 2, § 663. Unlike a decision on the merits, a consent decree will not be set aside based on an alleged error of decision by the court entering the decree, because "[s]uch an error is waived by consent to the decree." *Swift & Co. v. United States*, 276 U.S. 311, 327 (1928). Where review is based on claims that jurisdiction was lacking or that actual consent did not exist, however, a consent decree may be vacated on appeal. *See id.* at 324.

4. *See, e.g.,* Handler v. SEC, 610 F.2d 656, 659 (9th Cir. 1979) (consent decree provided that corporation would appoint special counsel to investigate its possible securities law violations).

The "equity jurisdiction" of federal courts is particularly broad and flexible when invoked to enforce federal statutory prohibitions. *See* *United States v. First Nat'l City Bank*, 379 U.S. 378, 383 (1965); *J.I. Case Co. v. Borak*, 377 U.S. 426, 433 (1964); *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *United States v. Coca-Cola Bottling Co.*, 575 F.2d 222, 228-29 (9th Cir. 1978). *See also* *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) (scope of federal district court's authority to remedy past constitutional wrongs is broad, for "breadth and flexibility are inherent in equitable remedies").

5. *See* 2 J. MOORE, J. LUCAS, H. FINK & C. THOMPSON, *MOORE'S FEDERAL PRACTICE* ¶ 4.02[3] (2d ed. 1985) (federal subject matter jurisdiction may not ordinarily be created by consent of the parties).

6. 735 F.2d 1535 (3d Cir.), *cert. denied*, 105 S. Ct. 431 (1984).

7. Then Chief Judge Seitz wrote the majority opinion, with Judge Becker concurring. Judge Garth issued a dissent.

8. *Id.* at 1538 (quoting *Pacific R.R. v. Ketchum*, 101 U.S. 289, 297 (1879)).

9. *Id.* The agreements that became consent decrees in *Sansom Committee* included terms and conditions that "far exceeded" the relief available under the federal statutes involved in the case. *Id.* at 1539.

10. *Id.* For a further discussion of the majority opinion, see *infra* notes 30-40 and accompanying text.

Seitz's analysis as to the district court's jurisdictional power to enter the consent decree, wrote separately to suggest prudential limits on a federal court's ability to undertake the implementation of such a consent decree pursuant to its equitable remedial power.<sup>11</sup> In a dissenting opinion, Judge Garth reasoned that where a federal court would lack jurisdiction to enforce an "involuntary" judgment against a person in a fully litigated case, it likewise lacked jurisdiction to enforce a consent decree against that person.<sup>12</sup>

The present controversy arose in the early 1960s, when the Redevelopment Authority of the City of Philadelphia (RDA) acquired by condemnation the 3400 block of Sansom Street, adjacent to the University of Pennsylvania (University).<sup>13</sup> The University obtained from the RDA the redevelopment rights to the block for a planned expansion, but subsequently proposed to transfer its rights to a commercial developer.<sup>14</sup> Approval of this proposal by the RDA and the United States Department of Housing and Urban Development (HUD) prompted a group of residents and users of the block, associated as the Sansom Committee (Committee), to sue the two agencies in federal district court in 1973,<sup>15</sup> under the National Environmental Policy Act of 1969 (NEPA)<sup>16</sup> and the National Housing Act of 1940 (NHA).<sup>17</sup> By bringing this action, the

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11. 735 F.2d at 1540 (Becker, J., concurring). Judge Becker expressed his concern as to the susceptibility of district courts being dragged into nonfederal disputes by way of overbroad consent decrees. *Id.* at 1543 (Becker, J., concurring). He suggested prudential guidelines that would limit a district court's equitable discretion in retaining continued authority over its relief decrees. *Id.* at 1544 (Becker, J., concurring). For a further discussion of Judge Becker's concurring opinion, see *infra* notes 41-49 & 102-109 and accompanying text.

12. 735 F.2d at 1546-47 (Garth, J., dissenting). Judge Garth argued that a federal district court had no power to enter a consent decree adjusting the rights of a nonparty to the litigation, where (1) the nonparty had no grounds to intervene in the litigation and (2) the nonparty could not have been made a party to the litigation. *Id.* at 1548-52 (Garth, J., dissenting). For a further discussion of Judge Garth's dissenting opinion, see *infra* notes 50-60 & 92-99 and accompanying text.

13. 735 F.2d at 1536. The tracts of land acquired by the RDA contained "sub-standard dwellings." *Id.* at 1541 (Becker, J., concurring). A major purpose of the acquisitions was to eliminate urban blight. *Id.*

14. *Id.* at 1536-37. The University originally intended to construct an 11-story administration building at the Sansom Street site. *Id.* at 1536. However, because it had overexpanded and no longer desired to utilize the Sansom Street properties, the University proposed to transfer its redevelopment rights. *Id.* at 1541 (Becker, J., concurring).

15. See *Sansom Comm. v. Lynn*, 366 F. Supp. 1271 (E.D. Pa. 1973).

16. 42 U.S.C. §§ 4231-4361 (1982). NEPA obliges federal agencies to consider the environmental consequences of their projects by requiring the filing of an environmental impact statement before agencies take any "major . . . actions significantly affecting the quality of the human environment." *Id.* § 4332(C).

17. 42 U.S.C. §§ 1441-1490h (1982). NHA provides for federal funding of urban renewal projects to eliminate urban blight through slum clearance and housing construction. *Id.* The Act provides for funding to prevent the decline of deteriorating neighborhoods through rehabilitation. *Id.* §§ 1452b, 1455.

Committee sought to block the proposed commercial redevelopment in favor of rehabilitation of existing townhouses.<sup>18</sup> Attempts by the University to intervene in the action were rejected by the district court.<sup>19</sup> In 1976, the case was suspended when the Committee, the University, and the RDA reached an "agreement in principle" not to tear down the Sansom Street houses.<sup>20</sup>

Four years later the district court approved the entry of this agreement as a consent decree.<sup>21</sup> The "1980 Consent Decree" set forth a procedure under which the Committee would designate persons who would be permitted to purchase and rehabilitate the Sansom Street properties.<sup>22</sup> However, the 1980 Consent Decree led only to further

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18. *See Sansom Comm. v. Lynn*, 366 F. Supp. 1271, 1274 (E.D. Pa. 1973). Rather than change the character of the neighborhood, the Committee by its suit sought to maintain the then-existing mix of residential and low-volume commercial use in the 3400 block of Sansom Street. 735 F.2d at 1537. The RDA and HUD moved to dismiss the Committee's federal and state law claims in their entirety. 366 F. Supp. at 1274. Surviving the motion to dismiss was the Committee's claim that the RDA and HUD, in approving the modification of the original redevelopment plan, violated NEPA by failing to issue an environmental impact statement and hold a public hearing to consider rehabilitation as an alternative means of redevelopment. 735 F.2d at 1539. (HUD subsequently filed an environmental impact statement in 1976. *Id.* at 1538). Also surviving the motion to dismiss were claims that the RDA and HUD violated NHA by permitting acceptance of non-public contributions to the redevelopment project, and failing to: (1) provide citizen participation in the project; (2) hold public hearings and seek local government approval of the project; (3) ensure the project's conformity to community and regional plans; and (4) provide adequate relocation for persons displaced by the project. *Id.* at 1539.

The Committee's additional claims under NHA and state law were dismissed by the district court. 366 F. Supp. at 1281. These additional claims included allegations that the RDA and HUD had violated the NHA by failing to: maximize housing; prevent unlawful condemnation; prevent illegal profit-making; follow required procedures for amending the redevelopment plan; and expedite the project's completion. *Id.*

With several federal claims surviving the agencies' motion to dismiss, the Committee was successful in preventing the demolition of the houses on the 3400 block of Sansom Street. *Sansom Comm. v. Lynn*, 382 F. Supp. 1245 (E.D. Pa. 1974). The Committee failed, however, in an identical effort to enjoin the RDA and HUD from demolishing the buildings on the 3400 block of Walnut Street, adjacent to Sansom Street. *Id.*

19. 735 F.2d at 1537. RDA and HUD also moved in district court to dismiss the action for the Committee's failure to join the University as an indispensable party to the action. 366 F. Supp. at 1280. The court denied the motion, although it recognized that the University was "undeniably" interested in the outcome of the case as owner of the redevelopment rights to buildings whose demolition the Committee was seeking to enjoin. *Id.* at 1280-81.

20. 735 F.2d at 1541 (Becker, J., concurring). As pointed out by Judge Becker, the 1976 "agreement in principle" was not legally binding, and "the RDA and the University were still free to change their respective minds until they actually signed a settlement agreement [in 1980]." *Id.* at 1541 n.1 (Becker, J., concurring).

21. *Id.* at 1537.

22. *Id.* The 1980 Consent Decree provided that the designees named by the Committee to purchase and rehabilitate the Sansom Street houses would be

litigation and negotiations,<sup>23</sup> and was replaced by a new agreement signed by the University and the Committee.<sup>24</sup> The new agreement, approved by the district court as a consent decree in 1982, essentially incorporated the terms of the 1980 Consent Decree<sup>25</sup> while adding extensive, detailed specifications for rehabilitating the Sansom Street houses.<sup>26</sup>

Subsequently, some of the individuals initially designated by the Committee to purchase Sansom Street houses decided to withdraw from the redevelopment project.<sup>27</sup> The Committee proposed replacement designees.<sup>28</sup> The University rejected this proposal and moved to enforce its interpretation of the 1982 Consent Decree<sup>29</sup> by requesting the district court to substitute the University as the redeveloper of properties that were originally to go to the Committee's withdrawing designees.<sup>30</sup> The district court resolved this issue in favor of the Committee,

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nominated by the University to redevelop the properties in its stead. *Id.* The nominated designees would have the right to buy the houses from the RDA at prices below market value. *Id.* See also *id.* at 1541 (Becker, J., concurring). The decree provided that the district court would retain jurisdiction to supervise its implementation. *Id.* at 1541 (Becker, J., concurring). The decree was signed by the University, the RDA, and the Committee; HUD consented to its entry. *Id.* at 1541-42 (Becker, J., concurring).

23. *Id.* at 1537. Both the Committee and the University desired to make changes in the 1980 Consent Decree, according to the University. *Id.* The Committee claimed the University was "stalling," however, and moved to enforce the decree. *Id.* In March, 1983, the district court entered an order naming the Committee's designees as per the procedure set forth in the 1980 Consent Decree. *Id.*

24. *Id.*

25. *Id.* at 1542 (Becker, J., concurring). The 1982 Consent Decree slightly modified the procedure whereby persons to purchase and rehabilitate Sansom Street properties were identified. *Id.* The University was granted a right of first refusal to buy houses if designated purchasers decided to sell. *Id.* For a discussion of the procedure for identifying persons to buy and rehabilitate the Sansom Street properties, see *supra* note 22 and accompanying text.

26. 735 F.2d at 1542 (Becker, J., concurring). The addition of specifications for rehabilitation of the Sansom Street houses to the 1982 Consent Decree lengthened it to "hundreds of pages, including exhibits such as plot plans, blueprints, design specifications, etc." *Id.* at 1548 n.2 (Garth, J., dissenting). The 1982 decree also specifically provided for continued district court jurisdiction to implement and enforce its terms. *Id.* at 1542 (Becker, J., concurring). The decree was signed by the University and the Committee, with the RDA consenting to its entry. *Id.* at 1537.

27. *Id.* at 1537. The Committee's initial designees had been named in the March, 1983, order of the district court. *Id.* For a discussion of this order, see *supra* note 23.

28. 735 F.2d at 1537.

29. *Id.* Although neither the 1980 Consent Decree nor the 1982 Consent Decree addressed the question of the replacement of withdrawing designees, the University argued that it should be entitled to purchase a property after the withdrawal of an initial designee. *Id.*

30. *Id.*

leading to the appeal in the present case.<sup>31</sup>

The Third Circuit, with Chief Judge Seitz writing for the majority, began its analysis by rejecting the University's initial contention that HUD's compliance with NEPA in 1976 terminated the district court's jurisdiction over the case.<sup>32</sup> The court then addressed the principal question on appeal: whether the district court had federal subject matter jurisdiction to enter the 1980 Consent Decree in light of the University's assertion that its terms comprised essentially state law relief.<sup>33</sup> Invoking the rule set forth by the United States Supreme Court in *Pacific Railroad v. Ketchum*,<sup>34</sup> the Third Circuit held that a district court has power to enter a consent decree if its terms come " 'within the general scope of the case made by the pleadings,' . . . [and] if the pleadings state a claim over which a federal court has jurisdiction."<sup>35</sup>

Applying *Pacific Railroad* to the facts in *Sansom Committee*, the court noted that the complaint in the Committee's original suit against the

31. *Id.* The district court concluded that both the 1980 and 1982 Consent Decrees implied that the Committee could designate more than one person to purchase a given Sansom Street property in the event that an initial designee withdrew from the redevelopment project. *Id.*

32. *Id.* at 1538. According to Chief Judge Seitz, it could be argued that HUD's filing of an environmental impact statement with respect to its plan to redevelop the Sansom Street block satisfied NEPA. *Id.* See 42 U.S.C. § 4332(c) (1982) (requiring environmental impact statements to address impact, adverse effects, and long-term consequences of proposed major federal actions affecting the environment, and alternatives to such actions). The court noted, however, that even if the environmental impact statement satisfied HUD's responsibilities under NEPA, the Committee's additional federal claims under NHA remained pending, and thus formed the basis for continuing federal jurisdiction over the litigation. 735 F.2d at 1538. For a discussion of these remaining claims, see *supra* note 18 and accompanying text.

33. 735 F.2d at 1537-39. Although the University's appeal in the present case was from the district court's denial of its motion to enforce the 1982 Consent Decree, the focus of its jurisdictional challenge was the district court's power to enter the 1980 Consent Decree. *Id.* at 1537-38. The Third Circuit noted that it was competent to hear the University's challenge because "the 1982 Consent Decree is essentially a modification of the 1980 Consent Decree, and the validity of the 1982 Consent Decree depends on the validity of the 1980 Consent Decree." *Id.* at 1538 (citing Delaware Valley Citizens' Counsel for Clean Air v. Pennsylvania, 674 F.2d 976, 980 (3d Cir.) (a court has inherent power to modify its consent decree), *cert. denied*, 459 U.S. 905 (1982)).

34. 101 U.S. 289 (1879).

35. 735 F.2d at 1538 (quoting *Pacific Railroad*, 101 U.S. at 297). The Supreme Court's rule in *Pacific Railroad* was based on the premise that "[p]arties to a suit have the right to agree to anything they please in reference to the subject-matter of their litigation, and the court, when applied to, will ordinarily give effect to their agreement." 101 U.S. at 297. For a further discussion of *Pacific Railroad*, see *infra* notes 74-78 and accompanying text.

The Third Circuit acknowledged that in approving a consent decree, "a district court [could not] wield its equitable power beyond the realm of its federal subject matter jurisdiction." 735 F.2d at 1538. The court implied that this restriction would not be violated if the consent decree met the requirements of *Pacific Railroad*. *Id.*

RDA and HUD stated several federal claims arising under NEPA and NHA.<sup>36</sup> The court found the 1980 Consent Decree to be within the general scope of the pleadings because it was “directly responsive to the Committee’s complaint under those statutes” and in accord with the general policies and goals of both NEPA and NHA.<sup>37</sup> Thus concluding that the district court had entered the decree without exceeding its subject matter jurisdiction, the majority indicated that its analysis under *Pacific Railroad* was not affected by the fact that the University, a party bound by the 1980 Consent Decree, was a nonparty to the underlying litigation.<sup>38</sup>

Proceeding to the merits of the University’s “motion to enforce” the 1982 Consent Decree, the Third Circuit examined whether the district court correctly declined to substitute the University for the Committee’s withdrawing designees.<sup>39</sup> The court agreed with the district court’s construction of the 1982 Consent Decree and affirmed its denial of the University’s motion.<sup>40</sup>

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36. 735 F.2d at 1539. The court noted that although a number of the Committee’s federal claims against the RDA and HUD were dismissed in the district court, several federal claims survived the agencies’ motion to dismiss and remained pending. For an enumeration of these claims arising under NEPA and NHA, see *supra* note 18 and accompanying text.

37. 735 F.2d at 1539. The Third Circuit stated that the purpose of NEPA was “to require federal agencies to consider local environmental consequences of their projects.” *Id.* (citing 42 U.S.C. §§ 4321, 4331 (1982); *Sansom Committee*, 366 F. Supp. at 1274). The court also noted that a purpose of NHA was to “encourage [neighborhood] rehabilitation and community participation in redevelopment.” *Id.* (citing 42 U.S.C. §§ 1441, 1441a (1982)).

The court emphasized that a detailed cooperative plan for the rehabilitation and use of the Sansom Street houses, providing for “maximal participation of interested members of the public,” was set forth in the 1980 Consent Decree. *Id.* Based on this finding, the court concluded that the consent decree was consistent with the general policy of NEPA and NHA as well as directly responsive to the Committee’s particular claim that RDA and HUD had violated NHA by failing to provide citizen participation in its challenged redevelopment plan. *Id.* See *Sansom Committee*, 366 F. Supp. at 1277 (HUD must establish project action committees for neighborhood development programs) (citing HUD Handbook, RHA 7387.0).

38. 735 F.2d at 1539. In rejecting the University’s contention that the district court lacked power to enter a consent decree signed by a nonparty, Chief Judge Seitz explained: “Since, in our view, the decree met the requirements of *Pacific Railroad*, we fail to see how this argument raises a question of subject matter jurisdiction.” *Id.* For a discussion of Judge Garth’s strong disagreement on this issue, see *infra* notes 50-60 and accompanying text.

39. *Id.* at 1539-40. For a discussion of the University’s motion to enforce the 1982 Consent Decree in the district court, see *supra* notes 29-31 and accompanying text.

40. 735 F.2d at 1539-40. The Third Circuit noted that consent decrees were to be construed as contracts. *Id.* at 1539 (citing *Fox v. HUD*, 680 F.2d 315, 319 (3d Cir. 1982)). In concluding that the district court had properly construed the 1980 and 1982 consent decrees, the court explained that a provision empowering the University to purchase a property if “no designee of the Sansom Committee shall elect to purchase [that] property” also implied that the



Although he concurred fully in Chief Judge Seitz's opinion, Judge Becker wrote separately to examine whether there were prudential limits, as opposed to jurisdictional limits, on the district court's equitable remedial power to approve the consent decrees.<sup>41</sup> Recognizing that the federal interest in the case was "essentially satisfied" in 1976,<sup>42</sup> Judge Becker questioned whether the district court should have committed itself, by entering the 1980 and 1982 consent decrees, to the ongoing resolution of questions of state contract and property law likely to be central to future disputes arising under the decrees.<sup>43</sup>

In Judge Becker's view, the expenditure of federal court resources to settle state law matters such as the particular contract interpretation dispute in *Sansom Committee* could be "wasteful and inappropriate" where diversity of citizenship was lacking between the parties.<sup>44</sup> On the other hand, Judge Becker recognized that such attention to state law matters was appropriate if truly necessary to protect federal rights, given the broad equitable power of federal courts to fashion remedies where federal statutes have been violated, and "to supervise the implementation of those remedies."<sup>45</sup> To draw the line between the two categories of

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Committee could designate more than one person to purchase a property. *Id.* at 1540.

41. *Id.* at 1540 (Becker, J., concurring). The question of prudential limits on the district court's ability to enter the 1980 and 1982 consent decrees was not raised by the parties either before the district court or the Third Circuit. *Id.*

42. *Id.* at 1541 (Becker, J., concurring). Judge Becker identified the federal interest in the case as the preservation of the residential character of the Sansom Street neighborhood. *Id.* According to Judge Becker, this interest was "essentially satisfied" in 1976 when the University, the RDA and the Committee reached their "agreement in principle" not to raze the houses on the 3400 block of Sansom Street. *Id.* Judge Becker noted that the 1976 "agreement" did not cause the district court to "lose" subject matter jurisdiction over the case, since several federal law issues remained to be litigated, and since the RDA and the University signed no binding settlement agreement at that time. *Id.* at 1541 n.1 (Becker, J., concurring).

43. *Id.* at 1540. (Becker, J., concurring). Judge Becker noted that both the 1980 and 1982 consent decrees specifically provided for continuing district court supervision to implement and enforce the decrees. *Id.* In light of the incorporation into the 1982 decree of extensive and "incredibly detailed" specifications for the rehabilitation of the Sansom Street houses, Judge Becker pointed out the likelihood that the district court would be substantially burdened by a "myriad of [future] motions" requesting interpretation of these specifications. *Id.* at 1543 (Becker, J., concurring).

44. *Id.* at 1543 (Becker, J., concurring).

45. *Id.* (citing *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1976)). Judge Becker, however, explained that the equitable remedial power of federal courts was not unlimited, even though federal jurisdiction was present:

The existence of a federal statutory or constitutional issue demanding a remedy does not give a federal judge a roving commission to adjust all disputes of whatever nature involving—however tangentially—the parties and those in proximity to them. Nor can parties expand the district court's equitable remedial power by consent.

*Id.*

cases, Judge Becker proposed a test permitting federal courts to exercise their equitable discretion to retain continuing authority over implementation of a relief decree only where:

- (a) this continuing federal supervision will probably further in some significant way a federal interest identified by statute or the constitution; or
- (b) continuing supervision is not likely to divert substantial resources away from claims arising under clear constitutional and statutory grants of jurisdiction; or
- (c) the unavailability of such relief is likely to deter potential litigants from bringing suits over which there is properly jurisdiction in federal court.<sup>46</sup>

To illustrate his proposed test, Judge Becker applied it to the facts in *Sansom Committee*.<sup>47</sup> Judge Becker concluded that the district court "might have" refused to approve the 1982 Consent Decree, or at least its specific provision for continuing federal supervision, if the test had been the law of the Third Circuit at that time.<sup>48</sup> Because the issue of prudential limits on federal equitable remedial power was never raised, however, Judge Becker declined to expressly decide whether the district court abused its discretion in approving the 1982 Consent Decree.<sup>49</sup>

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46. *Id.* at 1544 (Becker, J., concurring). Judge Becker's proposed test was designed to identify cases where "superintendency over proposed relief is of only marginal value in preserving the underlying federal rights for which Congress provided a federal forum and where the time required by this superintendency reduces the ability of the federal courts to grant prompt and full relief in other cases." *Id.* Judge Becker acknowledged that district judges were in the best position to make this determination, and that they should be accorded "substantial deference." *Id.* However, he felt appellate court scrutiny of such determinations was warranted by their "institutional consequences." *Id.*

Judge Becker argued that his proposed test would not hinder federal courts granting complex remedies requiring continuing supervision in areas such as prison reform and desegregation, where such relief is "clearly necessary to vindicate federal rights." *Id.* at 1545 (Becker, J., concurring). He also pointed out that his test would still allow parties to include anything they like in settlement agreements, and to enforce such settlement agreements as contracts in state court. *Id.* at 1544-45 & 1545 n.6 (Becker, J., concurring).

47. *Id.* at 1545-46 (Becker, J., concurring).

48. *Id.* In applying his test to the district court's exercise of discretion in entering the 1982 Consent Decree, Judge Becker concluded that (1) continuing district court supervision did not significantly further a federal interest because the original federal interests in the case were essentially resolved with the 1976 "agreement in principle," leaving primarily disputes as to who would be entitled to purchase the Sansom Street properties to be litigated; (2) continuing supervision would likely require a substantial expenditure of federal court resources to settle disputes arising from the detailed rehabilitation restrictions incorporated in the 1982 Consent Decree; and (3) the absence of the prospect that the district court would retain supervisory authority over settlement agreements would not have deterred the Committee from seeking relief in federal court in 1973. *Id.* at 1545 (Becker, J., concurring).

49. *Id.* at 1546 (Becker, J., concurring). Judge Becker noted that "[t]he rel-

In a dissenting opinion, Judge Garth challenged the majority's holding that the district court had jurisdiction to enter and enforce consent decrees signed by the University.<sup>50</sup> In his view, the majority improperly relied on the *Pacific Railroad* "rule" to dispose of the jurisdictional issue in the case.<sup>51</sup> Judge Garth explained that because a consent decree is an adjudication of rights between parties, a court's power to enter such a decree "exists only if the court has the initial authority to adjudicate the rights of those parties whom it binds to its judgment."<sup>52</sup> A court lacks this initial authority, according to Judge Garth, unless it has subject matter jurisdiction over the "entire dispute" between the parties who, having signed a settlement agreement, offer it for the court's approval as its judgment.<sup>53</sup>

Judge Garth next focused on the portion of the dispute amongst the

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evant focus for deciding whether the district court abused its discretion in granting particular relief is on the situation as it appeared to the district court at the time relief was granted." *Id.* Judge Becker acknowledged that his application of his proposed test benefited from his perspective in hindsight, and implied that the district court's approval of the 1982 Consent Decree would have been proper if the court could have reasonably concluded that such approval would bring the case to an end. *Id.*

50. *Id.* at 1546. (Garth, J., dissenting). For a discussion of the majority's holding in *Sansom Committee*, see *supra* notes 32-40 and accompanying text.

51. 735 F.2d at 1546 (Garth, J., dissenting). Judge Garth acknowledged that *Pacific Railroad* determined a federal court's power to enter a consent decree in terms of the content of the decree and its relationship to the pleadings in the underlying litigation. *Id.* at 1547 (Garth, J., dissenting) (citing *Pacific Railroad*, 101 U.S. at 297). He pointed out, however, that *Pacific Railroad* contained an additional precondition to the exercise of that power: Persons may by consent bind themselves to a court's judgment only "if when the court acts [by entering the consent decree] jurisdiction has been obtained." *Id.* (quoting *Pacific Railroad*, 101 U.S. at 298). For a discussion of the majority's reliance on the *Pacific Railroad* rule, see *supra* notes 34-38 and accompanying text.

52. 735 F.2d at 1547 (Garth, J., dissenting). Judge Garth noted that a "court's power to enter a consent decree flows from the same font of jurisdiction as does its power to enter an involuntary decree (that is, a decree which is not the product of the parties' consent)." *Id.* He explained that this power "cannot be conferred by consent; it is given by the Constitution and implementing statutes as enacted by Congress." *Id.* Judge Garth also rejected the argument that a party's consent to a court's subject matter jurisdiction could estop that party from later challenging the federal court's jurisdiction. *Id.* at 1547-48 (Garth, J., dissenting) (citing *Rubin v. Buckman*, 727 F.2d 71, 72 (3d Cir. 1984)).

53. *Id.* at 1548 (Garth, J., dissenting). In Judge Garth's view, the majority's analysis in *Sansom Committee* improperly relied on cases holding that a consent decree could afford relief "affecting a wider scope of activities than could relief authorized by the statute sued upon." *Id.* Judge Garth explained that the relevant inquiry in *Sansom Committee* was not the allowable scope of relief that could be included in the 1980 Consent Decree, but whether, as a threshold matter, the district court had acquired jurisdiction over the subject matter of the dispute between the University and the Committee, and over the parties themselves. *Id.* at 1547-48 (Garth, J., dissenting). He pointed out that a court's power to prescribe relief beyond that authorized by statute depended on the prior satisfaction of these two jurisdictional prerequisites. *Id.* at 1547 (Garth, J., dissenting) (citing *Swift & Co. v. United States*, 276 U.S. 311, 326 (1928)).

signers of the 1980 Consent Decree that implicated the University. He pointed out that Committee's original claims against the RDA and HUD, challenging their performance of public duties imposed by NHA and NEPA, involved the University only tangentially—as the named redeveloper under its contract with the RDA.<sup>54</sup> The University's legal rights and duties in the dispute, he noted, were “purely contractual.”<sup>55</sup>

Judge Garth argued that if the University, as a nonparty somewhat involved in the controversy underlying the *Sansom Committee* litigation, could not have been “made a party” to that litigation, then the district court lacked authority to bind the University to the 1980 Consent Decree, despite the fact that the University signed the decree and consented to its entry.<sup>56</sup> He explained that the University could not have been made a party to the *Sansom Committee* litigation for three reasons. First, the dispute between the Committee and the University gave rise to neither diversity nor federal question jurisdiction.<sup>57</sup> Second, neither pendent-party nor ancillary jurisdiction over this dispute could be properly exercised based on the Committee's original federal claims against HUD and the RDA.<sup>58</sup> Third, the University could not have asserted a

54. *Id.* at 1551 (Garth, J., dissenting).

55. *Id.*

56. *Id.* at 1548-49 (Garth, J., dissenting). Judge Garth noted the general rule that a court lacks jurisdiction to determine the rights of nonparties to the litigation. *Id.* at 1548 (Garth, J., dissenting) (citing *SEC v. Investors Sec. Corp.*, 560 F.2d 561, 568 (3d Cir. 1977)). He contended that “[w]here a court would be without power to enter judgment against a person because that person could not be made a party to the litigation, the court cannot bind that person to a consent decree.” 735 F.2d at 1548 (Garth, J., dissenting) (citing *Washington v. Penwell*, 700 F.2d 561, 574 (9th Cir. 1983)). In *Penwell*, a federal district court approved as a consent decree a contract between Oregon prison officials and state prison inmates that provided, *inter alia*, for state funding to insure adequate legal services for inmates. 700 F.2d at 571-72. Since the state was not a party in the action between the prisoners and the prison officials, the Ninth Circuit stated that binding it to the consent decree would amount to an “*ultra vires* judicial attempt to bind a nonparty . . . to the litigation.” *Id.* at 574. Notably, the state had not signed the consent decree in *Penwell*, and the prison officials had no authority under state law to bind the state to the funding commitment. *Id.* at 573. For a further discussion of the relationship of *Penwell* to the instant case, see *infra* note 97.

57. 735 F.2d at 1549 (Garth, J., dissenting).

58. *Id.* at 1549-52 (Garth, J., dissenting). The doctrine of ancillary jurisdiction permits a federal court to adjudicate a claim over which it lacks an independent basis of subject matter jurisdiction, because the claim is so closely related to the main federal claim(s) in the case. See generally 13 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3523 (2d ed. 1984). Pendent jurisdiction allows a plaintiff, in certain circumstances, to join with his federal claim related state law claims over which the court has no independent basis of subject matter jurisdiction. See 13B C. WRIGHT, A. MILLER & E. COOPER, *supra*, § 3567. Pendent-party jurisdiction refers to the extension of jurisdiction to additional parties, as opposed to additional claims, with respect to whom there is no independent basis of jurisdiction. See *id.* § 3567-3567.2. See generally Currie, *Pendent Parties*, 45 U. CHI. L. REV. 753 (1978).

Judge Garth's analysis of the applicability of these doctrines to the jurisdic-

right to intervene in the case, nor did the other parties consent to intervention by their participation in the 1980 Consent Decree.<sup>59</sup> Judge Garth concluded that the district court was without power to adjudicate any rights affecting the University, and that enforcement of the contrac-

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tional issue in *Sansom Committee* initially focused on a line of cases holding that a federal court has ancillary jurisdiction over actions brought to "effectuate its prior decrees, regardless of whether the court would have jurisdiction over the claim were it an original action." 735 F.2d at 1549-50 (Garth, J., dissenting) (citing *Dugas v. American Sur. Co.*, 300 U.S. 414, 428 (1937); *Local Loan Co. v. Hunt*, 292 U.S. 234, 239 (1934); *Root v. Woolworth*, 150 U.S. 401, 410-12 (1893)). Judge Garth reasoned that ancillary jurisdiction over the 1980 Consent Decree could not be based on this line of cases because the decree did not arise from an action to aid or effectuate a pre-existing consent decree. *Id.* at 1550. (Garth, J., dissenting).

Judge Garth next focused on the two-stage analysis for determining whether a federal court has jurisdiction over a state law claim between non-diverse parties, originally set forth in two Supreme Court cases. See *Owen Equip. Co. v. Kroger*, 437 U.S. 365 (1978); *Aldinger v. Howard*, 427 U.S. 1 (1976). Under the first stage of this analysis, the state law claims and the core federal claims must arise from "a common nucleus of operative fact . . . such that [a plaintiff] would ordinarily be expected to try them all in one judicial proceeding." *Kroger*, 437 U.S. at 378-79 (citing *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966)). Second, Congress may not have expressly or impliedly negated the exercise of jurisdiction over the nonfederal claim in the statute conferring jurisdiction over the federal claim. *Kroger*, 437 U.S. at 373 (quoting *Aldinger*, 427 U.S. at 18). Recognizing the difficulty of applying the "common nucleus" test, since neither the Committee nor the University actually asserted any per se claims against each other, Judge Garth focused on the "statutory phase" of the two-part test. 735 F.2d at 1550 (Garth, J., dissenting). He explained that under *Aldinger*, the reach of the statute conferring federal court jurisdiction over federal question claims "should be construed in light of the scope of the cause of action as to which federal judicial power has been extended by Congress." *Id.* at 1551 (Garth, J., dissenting) (quoting *Aldinger*, 427 U.S. at 17) (emphasis in original). In the instant case, Judge Garth noted, the Committee's federal claims challenged the performance by the RDA and HUD of their duties under federal law, with the University's involvement limited to its role as the named redeveloper under its contract with the RDA. *Id.* Judge Garth found no indication that "Congress intended that the adjudication of the duties of public agencies under [NHA and NEPA] be affected by the purely contractual rights of third-party redevelopers," especially where the redevelopers, like the University in the instant case, were never made a party to the litigation. *Id.* Thus finding the "statutory" phase of the two-part test unsatisfied, Judge Garth concluded that it was clear that neither pendent-party nor ancillary jurisdiction existed over the University with respect to the controversy in *Sansom Committee*. *Id.* at 1552 (Garth, J., dissenting).

59. 735 F.2d at 1552 (Garth, J., dissenting). Judge Garth acknowledged that where a person is a nonparty to the litigation, intervention as of right needs no independent federal jurisdictional grounds. *Id.* (citing *Kroger*, 437 U.S. at 375 n.18; 7A C. WRIGHT & A. MILLER, FEDERAL PRACTICE & PROCEDURE § 1917 (1972)). He found, however, that the stipulations of facts in the 1980 Consent Decree (that the University was a party to the settlement of the litigation and that the University "alleges that it has rights under a redevelopment contract affecting the [Sansom Street] properties") were insufficient to establish either a right to intervene or consent to intervention by the other parties. *Id.* at 1549-50, 1552 (Garth, J., dissenting).

tual obligations incorporated in the 1980 and 1982 Consent Decrees should have been sought in state court.<sup>60</sup>

The difficult issue raised by *Sansom Committee* is determining the point at which a federal court, exercising its equitable remedial powers, exceeds the scope of its subject matter jurisdiction, rendering the court incompetent to grant such relief. Although Chief Judge Seitz and Judge Garth took very different approaches to determining when this point is met,<sup>61</sup> they agreed that federal courts do not have unlimited power as to the relief such courts may incorporate in a consent decree.<sup>62</sup>

A federal court must have subject matter jurisdiction over a case to have the power to adjudicate the rights of persons before the court.<sup>63</sup> As pointed out by Judge Garth, this power comes only from "the Constitution and implementing statutes as enacted by Congress," whether the adjudication takes the form of a consent decree or a decision on the merits.<sup>64</sup> Where, as in the present case, plaintiffs allege a violation of federal statutes, the existence of a federal question clearly gives the court jurisdiction to decide the litigation between the parties identified in the pleadings.<sup>65</sup> That jurisdiction includes the power to grant a rem-

60. *Id.* at 1552 (Garth, J., dissenting).

In related litigation, the Third Circuit approved a 1983 modification of the 1982 Consent Decree by the district court. *See Sansom Comm. v. Lynn (Sansom II)*, 735 F.2d 1552, 1554 (3d Cir. 1984). The district court's modification order extended the deadline for the purchase of Sansom Street properties by the Committee's designees pending termination of any appeals relating to the properties. *Id.* at 1553. The University challenged the district court's power to enter the order. *Id.* at 1554. The Third Circuit upheld the district court's order on the grounds that "a district court possesses residual jurisdiction to enter orders to assist in maintaining the true status quo pending disposition of an appeal." *Id.* (citing *Hoffman v. Beer Drivers & Salesmen's Local Union No. 888*, 536 F.2d 1268, 1276 (9th Cir. 1976)). The decision in *Sansom II* is beyond the scope of this casebrief.

61. 735 F.2d at 1538; *id.* at 1548 (Garth, J. dissenting). Judge Becker also expressed his view that the exercise of equitable remedial power by federal courts was subject to prudential, "and at some point . . . constitutional limits on the scope of that power." *Id.* at 1544 (Becker, J., concurring).

62. For a discussion of Chief Judge Seitz's approach to jurisdictional limitations on the scope of equitable relief that may be incorporated in a consent decree, see *supra* notes 33-38 and accompanying text. For a discussion of Judge Garth's approach to the question, see *supra* notes 50-60 and accompanying text.

63. *See generally* M.D. GREEN, BASIC CIVIL PROCEDURE 15-32 (2d ed. 1979); J. FLEMING & G. HAZARD, CIVIL PROCEDURE § 1.13 (2d ed. 1977).

64. 735 F.2d at 1547 (Garth, J. dissenting). *See* U.S. CONST. art. III, § 2 (extending judicial power of federal courts to cases in which the United States is a party, cases between citizens of different states, and cases arising under the Constitution, laws, and treaties of the United States); *id.* art. III, § 1 (vesting federal judicial power in "such inferior Courts as the Congress may . . . establish"); 28 U.S.C. §§ 1331-1361 (1982) (giving original federal jurisdiction to federal district courts over various classes of cases within federal judicial power as limited by Constitution).

65. *See Cox v. International Union of Operating Eng'rs*, 672 F.2d 421, 422 (5th Cir. 1982) (original federal jurisdiction exists where complaint raises substantial claim founded directly on federal law). *See also Smith v. Kansas City Title*

edy, at law or in equity.<sup>66</sup> The Supreme Court has consistently recognized that federal courts have broad discretion to exercise their equitable remedial power, especially where public rights are sought to be vindicated.<sup>67</sup> The permissible scope of this equitable power is often characterized as a federal court's "equitable jurisdiction."<sup>68</sup> The term is misleading, for power to grant a remedy provides no independent grounds for exercising federal subject matter jurisdiction.<sup>69</sup>

In *Sansom Committee*, the test devised by the majority to determine whether a consent decree exceeds a district court's federal question jurisdiction protects the court's ability to exercise fully its equitable remedial discretion.<sup>70</sup> On its face, the test requires only that the decree's terms fall within the general scope of the case as pleaded, and that the pleadings state a federal claim.<sup>71</sup> As applied by the Third Circuit, however, the test may require a more direct, "responsive" relationship be-

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& Trust Co., 255 U.S. 180, 199-201 (1921) (nature of the cause of action asserted by plaintiff determines whether federal jurisdiction exists). See generally P. BATOR, P. MISHKIN, D. SHAPIRO & H. WECHSLER, *HART AND WECHLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM* 844-926 (2d ed. 1973) (discussing prerequisites to the exercise of federal jurisdiction).

66. See *Handler v. SEC*, 610 F.2d 656, 659 (9th Cir. 1979) (federal district court is inherently invested with equitable powers and may mold decree to necessities of a particular case); *United States v. Brown*, 331 F.2d 362, 364 (10th Cir. 1964) (inferior federal courts historically are possessed with inherent equitable powers of common law courts).

In the view of one commentator, equitable relief has become so available to public law litigants over the past century that it may no longer be regarded as "extraordinary." See Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281, 1292 (1976). According to Professor Chayes, equity has gradually shed the historical constraints on its power to order affirmative, as well as injunctive relief, often resulting in "a decree embodying an affirmative regime to govern the range of activities in litigation and having the force of law for those represented before the court." *Id.* at 1293.

67. See, e.g., *United States v. First Nat'l City Bank*, 379 U.S. 378, 383 (1965) (court of equity will go further in granting relief when acting to further public interest or congressional policy); *J.I. Case Co. v. Borak*, 377 U.S. 426, 433 (1964) (federal courts should be alert to provide whatever remedies are necessary to effectuate congressional purpose of statute under which suit is brought); *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) (where public interest is involved, district court's inherent equitable powers assume broader and more flexible character).

68. See, e.g., *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *United States v. Coca-Cola Bottling Co.*, 575 F.2d 222, 228 (9th Cir. 1978).

69. See *In Re Agent Orange Prod. Liability Litig.*, 506 F. Supp. 737, 740 (E.D.N.Y. 1979) (federal courts have no independent "equity jurisdiction" and may grant equitable relief only if independent statutory basis for federal subject matter jurisdiction exists), *rev'd on other grounds*, 635 F.2d 987 (2d Cir. 1980), *cert. denied*, 454 U.S. 1128 (1981). See also 7 pt.2 J. MOORE, J. LUCAS & K. SINCLAIR, *MOORE'S FEDERAL PRACTICE* ¶ 65.03[1](2) (2d ed. 1985) (equitable "jurisdiction" refers to propriety of issuing equitable relief such as injunction).

70. For a discussion of the Third Circuit's jurisdictional test, see *supra* notes 33-38.

71. 735 F.2d at 1538.

tween the particular federal claims pleaded and the relief included in the decree.<sup>72</sup> In addition, the court's decision indicates that the federal claims must remain viable up to the point at which the consent decree is entered, in order for the district court to have jurisdiction at that time.<sup>73</sup>

The Third Circuit relied on *Pacific Railroad* as authority for its scope-of-the-pleadings test, yet federal jurisdiction in that case was based on diversity of citizenship, rather than the existence of a federal question.<sup>74</sup> *Pacific Railroad*, in fact, involved no federal claims at all.<sup>75</sup> Moreover, the language adopted from *Pacific Railroad* was articulated in response to the appellant's allegations of errors in the terms of a consent decree, not allegations that the trial court, in the first instance, lacked jurisdictional power to enter the decree settling the case.<sup>76</sup> In effect, the *Sansom Committee* majority took a statement setting liberal boundaries for the equitable remedial discretion of a court exercising diversity jurisdiction over a case, and adopted it as an affirmative statement of jurisdiction to approve a settlement agreement in federal question litigation.<sup>77</sup>

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72. *Id.* at 1539. It is submitted that the broad language of the Third Circuit's scope-of-the-pleadings test could be satisfied, literally, by a consent decree that was far less responsive to a federal claim than the decree in *Sansom Committee*. Nevertheless, the court took pains to show that the terms of the 1980 Consent Decree were responsive to particular federal claims as well as consonant with the general policies and goals of the statutes under which the claims were brought. *See id.* Since the decree was well within the literal requirements of the court's test, it remains to be seen where the test's outer limits may lie. For a further discussion of the Third Circuit's jurisdictional test, and for a discussion of its application to the terms of the 1980 Consent Decree, see *supra* notes 33-38 and accompanying text.

73. 735 F.2d at 1539.

74. *See Pacific Railroad*, 101 U.S. at 297-99. In *Pacific Railroad*, the appellant challenged the validity of a consent decree on the grounds that the parties to the underlying suit were not completely diverse. *Id.* at 297. The Court held that despite the positions occupied by the parties in the pleadings, the trial court "had power to ascertain the real matter in dispute, and arrange the parties on one side or the other of that dispute." *Id.* at 298. Pursuant to such an adjustment, the Court found the parties to be completely diverse at the time the consent decree was entered. *Id.* The Court stated that "[c]onsent cannot give the courts of the United States jurisdiction, but it may bind the parties and waive previous errors, if when the court acts jurisdiction has been obtained." *Id.* Thus the jurisdictional issue in the case was decided on principles other than the scope-of-the-pleadings standard adopted by the Third Circuit.

75. *Id.* The subject matter of the litigation in *Pacific Railroad*, a mortgage foreclosure sought by the appellee, involved only questions of state property law. *Id.*

76. *Id.* at 295-97. Appellant, *Pacific Railroad*, argued that its attorney lacked authority to consent to rendition of the decree. *Id.* at 295. The court rejected this alleged "error in form" in the decree because the record in the case showed that the appellant itself had assented to the decree. *Id.* at 295-96. Given the appellant's assent, the Court would not consider any errors asserted against the terms of the decree, as long as these terms came "within the general scope of the case made by the pleadings." *Id.* at 297. These errors were "waived" by the parties' consent. *Id.* at 295.

77. 735 F.2d at 1538. The limitation on the content of a consent decree



Since a court's remedial power is not coextensive with its power to decide a case in the first instance, it would appear that the majority's reliance on *Pacific Railroad* to decide a jurisdictional issue was inappropriate.<sup>78</sup> Nevertheless, it will be argued that the result reached by the majority in *Sansom Committee* was correct because it was consistent with Supreme Court precedent denying practically all conceivable jurisdictional challenges to consent decrees that have disposed of pending claims over which federal jurisdiction has been properly exercised.<sup>79</sup>

In Judge Garth's view, the majority's approach confused two discrete issues—the scope of activities that may be affected by a consent decree once jurisdiction has been established, and the power of a court to adjudicate the rights of a person involved in those activities, particularly where the person was not a party in the underlying federal question litigation.<sup>80</sup> Judge Garth's criticisms clearly have merit. The discretion to impose a far-reaching equitable remedy in a consent decree cannot cure a prior defect in the court's subject matter jurisdiction over a case.<sup>81</sup> Nevertheless, it is submitted that the asserted defect in *Sansom Committee*—the lack of subject matter jurisdiction to adjudicate the rights

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expressed in *Pacific Railroad* arguably parallels the constitutional limitation on a federal court's exercise of its judicial powers to matters within the scope of a "case or controversy." See U.S. CONST. art. III, § 2, cl. 1. The same general principle—that the relief granted in a consent decree must be supported by sufficient facts alleged in the pleadings of the underlying litigation—may be implied from language in other cases. See, e.g., *Swift & Co. v. United States*, 276 U.S. 311, 327 (1928) ("allegations of the bill not specifically denied may have afforded ample basis for a decree"); *SEC v. Thermodynamics, Inc.*, 319 F. Supp. 1380, 1382 (D. Colo. 1970) ("consent decree, within the purview of the pleadings and the scope of the issues, is valid and binding on the parties consenting"), *aff'd*, 464 F.2d 457 (10th Cir. 1972), *cert. denied*, 410 U.S. 927 (1973).

One federal district court, however, has held that if the parties "could otherwise contract to do" the acts ordered by a consent decree, then the court would have power to enter the decree, even if those acts were not justified by (i.e., within the scope of) the complaint in the underlying litigation. See *Metro-politan Hous. Dev. Corp. v. Village of Arlington Heights*, 469 F. Supp. 836, 853-55 & 854 n.20 (N.D. Ill. 1979), *aff'd*, 616 F.2d 1006 (7th Cir. 1980). The *Arlington Heights* court indicated that parties to a consent decree are "otherwise" able to contract to perform certain acts where "the parties would not need the court's powers to carry out their plans." *Id.* at 854 n.20. The court implied that approval of relief beyond the scope of the complaint in such cases could not be regarded as collusive expansion of the jurisdiction and power of the court entering the decree. *Id.* at 854. The court further noted that a "court could enter the decree to end the litigation and could subsequently enforce it as part of its inherent, derivative power." *Id.* at 854-55 & 854 n.20.

78. For a discussion of the distinction between a court's remedial power and its jurisdictional power, see *supra* notes 61-69 and accompanying text.

79. See *Swift & Co. v. United States*, 276 U.S. 311 (1928). For a discussion of *Swift*, see *infra* notes 82-94 and accompanying text.

80. 735 F.2d at 1547-48 (Garth, J., dissenting). For a discussion of Judge Garth's criticisms of the majority's approach in *Sansom Committee*, see *supra* notes 50-60 and accompanying text.

81. See, e.g., *Peterson v. Sears*, 238 F. Supp. 12, 13 (N.D. Iowa 1964) (fact that plaintiff sought injunctive relief did not confer jurisdiction on federal court

of the University—did not constitute such a prior defect. Rather, it arose only when the University signed the 1980 Consent Decree, and therefore was not an impediment to the district court's power to decide the federal question litigation pending before it.

Where jurisdiction over litigation exists, the court's power to enter even a substantially overbroad consent decree is practically immune from attack on jurisdictional grounds, according to the Supreme Court's decision in *Swift & Co. v. United States*.<sup>82</sup> In *Swift*, the defendants, members of the meat-packing industry, failed to persuade the Court that the consent decree entered against them in a federal antitrust suit brought by the government was void because some of its terms were beyond the court's jurisdiction.<sup>83</sup> Certain provisions of the decree enjoined the packers' participation in businesses that the packers argued were beyond the court's jurisdiction to regulate under the Sherman Act because they were "wholly intrastate and in no way related to the [alleged] conspiracy to obstruct interstate commerce."<sup>84</sup> The Court noted that to enjoin such activities would be error but that the error did not affect the court's jurisdiction to enter the decree.<sup>85</sup> Rather, the Court held that the allegations of a conspiracy to obstruct interstate commerce in the government's complaint brought the case as a whole within the court's jurisdiction, and that the court's power to enjoin, based on the complaint, included "the power to enjoin too much."<sup>86</sup>

Of course, the jurisdictional challenge in *Sansom Committee* differs from the challenge in *Swift* because it was asserted by a nonparty to the

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where complaint failed to indicate any grounds for exercising federal subject matter jurisdiction).

82. 276 U.S. 311, 330-31 (1928). Since the Third Circuit's decision in *Sansom Committee* does contemplate that a party could successfully challenge a federal court's jurisdiction to enter a consent decree where the court originally had jurisdiction over the underlying litigation, it appears to depart from the Supreme Court's approach in *Swift*.

83. *Id.* at 325-31.

84. *Id.* at 331. The defendants in *Swift* also argued that the consent decree was entered without subject matter jurisdiction because the allegedly illegal transactions were never proved to be violations of federal antitrust law. *Id.* at 327. The Court rejected this argument on the grounds that a consent decree regulating future conduct may provide any relief justified by the pleadings, without any findings of fact. *Id.* The Court explained that by consenting to the entry of the decree without such findings, the defendants allowed the trial court to construe the pleadings in the case, and to find in them circumstances justifying the injunctive relief provided in the decree. *Id.* at 329.

85. *Id.* at 331. The Court distinguished an "error in decision from the want of power to decide." *Id.* at 330. Although error ordinarily may be corrected on appeal, such error is waived by consent to the decree. *Id.* at 327.

86. *Id.* at 330-31. One commentator on the Supreme Court's decision in *Swift* has noted: "Following this decision what can be said as to the binding effect of a consent decree after the time for appeal has expired? The answer would seem to be that this decision effectively precludes the possibility of any successful attack on the ground that it is void." Note, *Consent Decrees*, *supra* note 2, at 890-91.

underlying litigation that nevertheless became a party to the settlement of the litigation by signing the consent decree.<sup>87</sup> In such circumstances, Judge Garth argued that the court must have some basis for exercising jurisdiction over the “entire dispute” between the parties signing the decree before it could enter the decree.<sup>88</sup> At first blush, the argument appears to restate the principle enunciated in *Swift*, that power to enter a decree is predicated on jurisdiction over the case as a whole.<sup>89</sup> In *Swift*, however, the scope of the case, for jurisdictional purposes, was the case made by the pleadings.<sup>90</sup> By contrast, Judge Garth’s jurisdictional inquiry in the instant case focused on the scope of the case as defined by the breadth of the terms of the 1980 Consent Decree.<sup>91</sup>

It is submitted that Judge Garth’s analytical approach to a federal court’s power to enter a consent decree cannot be reconciled with *Swift*. Judge Garth’s approach requires an inquiry into every legal right adjudicated under a decree to determine whether the dispute in which the right was asserted could have formed the basis for a claim which could have been brought in federal court.<sup>92</sup> This appears to be precisely the kind of inquiry precluded by *Swift*.<sup>93</sup> Moreover, Judge Garth’s approach

87. See 735 F.2d at 1549 (Garth, J., dissenting). In *Swift*, the jurisdictional challenge was raised by two of the defendant meat-packing companies named in the government’s complaint, both of whom consented to entry of the decree enjoining various of their business activities. 276 U.S. at 319-21.

88. 735 F.2d at 1548 (Garth, J., dissenting).

89. 276 U.S. at 330-31.

90. For a discussion of the Supreme Court’s disposition of the jurisdictional challenge asserted in *Swift*, see *supra* notes 82-96 and accompanying text.

91. 735 F.2d at 1548-52 (Garth, J., dissenting). The significance of the difference between Judge Garth’s analytical approach and that of the Court in *Swift* is illustrated by the structure of the instant case. In light of *Swift*, it is submitted that the federal claims raised in the Committee’s complaint against the RDA and HUD provided the requisite jurisdictional competence to enter the 1980 Consent Decree, regardless of the fact that the University became a party to the settlement of the litigation by signing the decree. Under Judge Garth’s approach, the jurisdictional inquiry was not limited to whether the claims between the Committee and the agencies could be heard by a federal court. *Id.* Rather, Judge Garth was concerned that the district court have jurisdiction over the entire dispute between *all persons signing* the 1980 Consent Decree. *Id.* at 1548 (Garth, J., dissenting). Thus, Judge Garth required an additional set of interests and legal relationships—those implicating the University in the dispute between the Committee and the agencies—to be within the district court’s federal subject matter jurisdiction in order for the court to be competent to enter the decree. *Id.* at 1549-52 (Garth, J., dissenting).

92. See *id.* at 1549-52 (Garth, J., dissenting). In applying his analytical approach to the facts of the instant case, Judge Garth examined the interests of the University and the Committee in the controversy resulting in the 1980 and 1982 consent decrees. *Id.* Judge Garth envisioned a claim implicating the University that could have arisen from those interests, and decided that the district court would not have had federal question jurisdiction, pendent-party or ancillary jurisdiction over such a claim. *Id.*

93. For a discussion of the Supreme Court’s rejection of the jurisdictional attack in *Swift*, see *supra* notes 82-86 and accompanying text.

is inconsistent with other, more recent cases in which federal courts have shown a reluctance to undertake a protracted examination of the precise legal rights of litigants submitting a settlement agreement for the court's approval.<sup>94</sup>

It is further submitted that the University's status as a nonparty to the litigation in *Sansom Committee* raised a question primarily of personal jurisdiction, rather than subject matter jurisdiction, that became insignificant when the University consented to the district court's jurisdiction by signing the 1980 Consent Decree.<sup>95</sup> Although the decree imposed an affirmative contractual obligation on the University, the University had carefully negotiated the terms of the decree, and willingly consented to its entry as the court's judgment in the case.<sup>96</sup> There could be no concern that the University had been subjected to the court's decree without having had its day in court. Given these circumstances, it is submitted that the question of whether the court had subject matter jurisdiction to adjudicate the University's rights required the same analysis as the question of whether the court could enjoin the allegedly "intrastate" activities of the parties to the underlying litigation in *Swift*.<sup>97</sup> In both the

94. See *Citizens for a Better Environment v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir. 1983), cert. denied, 104 S. Ct. 2668 (1984). In *Gorsuch*, the court stated that "it is precisely the desire to avoid a protracted examination of the parties' legal rights which underlies consent decrees. Not only the parties, but the general public as well, benefit from the saving of time and money that results from the voluntary settlement of litigation." 718 F.2d at 1126. See also *Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights*, 616 F.2d 1006, 1014 (7th Cir. 1980) (court approving settlement need not inquire into parties' precise legal rights, but should determine if settlement is fair and if concerned parties have given valid consent); *Equal Employment Opportunity Comm'n v. Safeway Stores*, 611 F.2d 795, 801 (10th Cir. 1979) (policy of voluntary settlement important to federal statutory enforcement would be undermined "if approving court were required to establish the facts underlying the parties' positions before approving a consent decree"), cert. denied, 446 U.S. 954 (1980).

95. See *Meetings & Expositions, Inc. v. Tandy Corp.*, 490 F.2d 714, 717 (2d Cir. 1974) (party's stipulation and agreement of settlement was consent to exercise of court's power to compel compliance, even if court lacked personal jurisdiction over party during the underlying litigation).

96. 735 F.2d at 1549 (Garth, J., dissenting).

97. In Judge Garth's view, the University's status as a nonparty to the underlying litigation in *Sansom Committee* was crucial. *Id.* at 1548 (Garth, J., dissenting). In a critical step of his analysis, Judge Garth argued from the premise that where a person could not have been made a party to the litigation culminating in a consent decree, a court could not bind the person to the decree. *Id.* The premise was based on the Ninth Circuit's decision in *Washington v. Penwell*, 700 F.2d 570 (9th Cir. 1983). In *Penwell*, state prison inmates petitioned for enforcement of a consent decree whose terms required state funding of a prisoners' legal services program. *Id.* at 572. The state of Oregon was never a party to the litigation. *Id.* at 574. Unlike the University in *Sansom Committee*, the state of Oregon was also a nonparty to the consent decree itself. *Id.* In *Penwell*, the named defendants in the litigation, who alone consented to entry of the decree, were state officials without power to bind the state to the financial undertaking contained in the decree. *Id.* at 573. The Ninth Circuit held that the contract entered as a consent decree was void to the extent its provisions exceeded the

instant case and *Swift*, the principle that federal subject matter jurisdiction may not be created by the consent of the parties was raised,<sup>98</sup> and the jurisdictional objection was based on an asserted expansion of the court's jurisdiction to matters beyond its authority to decide.<sup>99</sup>

It is submitted that the majority's resolution of the jurisdictional issue in *Sansom Committee* properly protects the power of federal courts to implement broad equitable remedies where a federal statute has been violated. Yet the decision's practical effect is to provide for continuing federal supervision over a consent decree likely to generate much future litigation that arguably does not belong in federal court.<sup>100</sup> This raises the institutional concern of the proper allocation of limited federal court resources.<sup>101</sup> Because the court declined to articulate demanding jurisdictional limitations on the content of federal consent decrees, Judge

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defendants' authority. *Id.* The court also held that to give effect to the decree as a judicial act, despite its deficiencies as a contract, would amount to an *ultra vires* judicial attempt to bind a nonparty, the state of Oregon, to its judgment. *Id.* at 574. The state "could not have been a party" to the litigation in *Penwell* because the eleventh amendment prohibits lawsuits against the state by private parties in federal courts. *See* U.S. CONST. amend. XI. To bind the state to the funding provision in the consent decree would "create an impermissible constitutional confrontation between the federal court and the state legislature." 700 F.2d at 574. In *Sansom Committee*, however, where the University did consent to entry of the decree, and where there was no such constitutional confrontation, the premise derived from *Penwell* would seem to be inapplicable.

Judge Garth also based his premise on the district court's decision in *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 469 F. Supp. 836, 854-55 (N.D. Ill. 1979), *aff'd*, 616 F.2d 1996 (7th Cir. 1980). The *Arlington Heights* court held that it could not "enter a consent decree which orders the performance of actions the parties could not otherwise contract to perform unless the relief ordered could be granted if the plaintiff prevailed in the lawsuit." 469 F. Supp. at 854-55. The agreement in *Sansom Committee*, however, involved the transfer of redevelopment rights to designees of the Sansom Committee pursuant to procedures that the parties would appear to have been capable to arrange on their own, without resort to the court's powers. 735 F.2d at 1537. In such circumstances, the content of the consent decree would not be limited to the relief available to a plaintiff prevailing in the lawsuit, according to the court in *Arlington Heights*. 469 F. Supp. at 854 n.20.

98. 735 F.2d at 1547 (Garth, J., dissenting) (citing *Neirbo v. Bethlehem Corp.*, 308 U.S. 165, 167 (1939)); *Swift*, 276 U.S. at 329. *See generally* 2 J. MOORE, J. LUCAS, H. FINK & C. THOMPSON, *MOORE'S FEDERAL PRACTICE* ¶ 4.02[3] (2d ed. 1985).

99. *Sansom Committee*, 735 F.2d at 1547; *Swift*, 276 U.S. at 325-31.

100. *See* 735 F.2d at 1542-43 (Becker, J., concurring). Judge Becker was particularly concerned about the potential for extensive future litigation arising from the 1982 Consent Decree, which incorporated extensive specifications for the rehabilitation of the Sansom Street properties. *Id.* at 1543 (Becker, J., concurring). Since the district court by the terms of the 1982 Consent Decree retained jurisdiction over its implementation, any dispute over the interpretation of these specifications could be brought in the district court. *Id.* According to Judge Becker, the federal interest in the case—the preservation of the residential character of the neighborhood—was no longer at issue, and these disputes belonged in state court. *Id.*

101. Professor Chayes has recognized the significant commitment of fed-

Becker appropriately recommended prudential limits in his concurring opinion.<sup>102</sup>

Under Judge Becker's proposed standard, a district court's decision to retain continuing authority over implementation of its relief decree must balance the expenditure of federal resources anticipated to accompany such a commitment with the federal interest served.<sup>103</sup> Failure to properly consider these factors would constitute an abuse of the district court's equitable discretion to enter a consent decree providing for such supervision.<sup>104</sup> Judge Becker's proposal is consistent with the principles of equitable remedies enunciated by the Supreme Court in *Swann v. Charlotte-Mecklenburg Board of Education*,<sup>105</sup> requiring the extent of a federal court's remedy to be determined by the nature and scope of the constitutional or statutory violation.<sup>106</sup> Moreover, the proposal comports with other cases calling for courts to review proposed consent decrees for their "consistency with the public interest."<sup>107</sup> The need to

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eral court resources necessary to implement consent decrees in public law litigation:

The centerpiece of the emerging public law model is the decree. It differs in almost every relevant characteristic from relief in the traditional model of adjudication, not the least in that it is the centerpiece. The decree seeks to adjust future behavior, not to compensate for past wrong. . . . It provides for a complex, ongoing regime of performance rather than a simple, one-shot, one-way transfer. Finally it prolongs and deepens, rather than terminates, the court's involvement with the dispute.

Chayes, *supra* note 66, at 1298.

102. 735 F.2d at 1540-46 (Becker, J., concurring). For a discussion of Judge Becker's concurring opinion, see *supra* notes 41-49 and accompanying text.

103. 735 F.2d at 1544. For a discussion of Judge Becker's three-part test for when a federal court may retain continuing authority over implementation of its consent decree, see *supra* notes 46-49 and accompanying text.

104. 735 F.2d at 1544 (Becker, J., concurring). Judge Becker's concurring opinion does not specify the procedural context in which a party signing a consent decree could assert that the district court abused its discretion in entering the decree. *Id.* at 1540-46 (Becker, J., concurring). An intervenor could raise such an objection on direct appeal of the decree. See *Dawson v. Patrick*, 600 F.2d 70, 74 (7th Cir. 1979). However, the Supreme Court's decision in *Swift* indicates that consent to the decree waives a party's right to claim any error in the decree on direct appeal of the decree. 276 U.S. at 331. Where, as in the instant case, a consent decree is collaterally attacked by a party consenting to its entry, *Swift* indicates that the grounds for such an attack would be limited to jurisdictional objections. See *id.* at 324.

105. 402 U.S. 1 (1971).

106. *Id.* at 16. The Court in *Swann* stated: "As with any equity case, the nature of the violation determines the scope of the remedy." *Id.* Although *Swann* involved an asserted constitutional violation, the Court has applied the same equitable principle where federal statutory rights are sought to be protected. See, e.g., *United States v. First Nat'l City Bank*, 379 U.S. 378, 383 (1965).

107. See *United States v. Trucking Employees, Inc.*, 561 F.2d 313, 317 (D.C. Cir. 1977) (quoting *United States v. Allegheny-Ludlum Indus.*, 517 F.2d 826, 850 (5th Cir. 1975), *cert. denied*, 425 U.S. 944 (1976)). See also *Metropolitan*

prevent the wasteful expenditure of limited federal court resources to serve marginal federal interests is certainly an important factor to be considered in such review.

Judge Becker's approach avoids the rigidity of a strict jurisdictional analysis, which evaluates the validity of a consent decree based on jurisdictional facts existing at the time the decree is entered.<sup>108</sup> It is submitted that the approach is flexible enough to address changing circumstances affecting both the prominence of the federal interest involved and the strain of continued implementation on federal courts. Thus, if ongoing supervision of the consent decree turned out to be a waste of federal resources, a district court's subsequent refusal to relinquish supervisory control could be readily overturned on appeal, under Judge Becker's scheme.<sup>109</sup>

The Third Circuit's decision in *Sansom Committee* prescribes a straightforward test for federal courts to apply when faced with jurisdictional challenges to consent decrees.<sup>110</sup> The test requires the terms of the consent decree to fall within the general scope of the pleadings, more than the Court in *Swift* required, so in some cases it could become an obstacle for courts or practitioners seeking to approve comprehensive settlement agreements to dispose of pending federal question litigation.<sup>111</sup> On the other hand, the decision helps to insulate consent decrees from collateral attack on the grounds that a nonparty to the litigation signed the decree, thereby eliminating a potential trap for the unwary.<sup>112</sup>

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Hous. Dev. Corp. v. Village of Arlington Heights, 616 F.2d 1006, 1015 (7th Cir. 1980) (district court must satisfy itself that settlement was equitable and in the public interest).

108. 735 F.2d at 1538.

109. *Id.* at 1546 (Becker, J., concurring).

110. For a discussion of the Third Circuit's test for determining a federal court's jurisdiction to enter a consent decree, see *supra* notes 33-35 & 70-79 and accompanying text.

111. One district court has speculated "that parties frequently settle cases and enter consent agreements which provide for relief not strictly justified by the complaint. Since these agreements are usually not breached, and since intervenors rarely appear to challenge their validity, courts may not have had occasion to pass upon their legality." Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights, 469 F. Supp. 836, 854 n.19 (N.D. Ill. 1979), *aff'd*, 616 F.2d 1006 (7th Cir. 1980). In such consent decree cases, practitioners must now be aware of the possible success of a jurisdictional challenge under *Sansom Committee*.

112. Nonparties with definite interests in pending federal litigation often fall short of the requirements for formal intervention as of right under the Federal Rules of Civil Procedure. See FED. R. CIV. P. 24(a)(2); Donaldson v. United States, 400 U.S. 517 (1971) (interest must be significantly protectable interest); Stockton v. United States, 493 F.2d 1020 (9th Cir. 1974) (interest must be practically impaired); *In Re Penn Central Commercial Paper Litig.*, 62 F.R.D. 341 (S.D.N.Y.) (interest must be direct rather than contingent, and based on right belonging to proposed intervenor rather than to existing party to the litigation), *aff'd*, 515 F.2d 505 (2d Cir. 1975); Annot., 5 A.L.R. FED. 518 (1970). Parties to

The Third Circuit's enunciation of jurisdictional limitations on a federal court's power to enter a consent decree is consistent with established principles governing federal courts' exercise of their equitable remedial powers.<sup>113</sup> Therefore, it is submitted that practitioners should expect little effective change in their ability to negotiate ancillary remedies to alleged violations of federal statutes. Where, however, a practitioner seeks ongoing, active federal court involvement in the implementation of such a consent decree, Judge Becker's concurring opinion indicates that he or she had better be prepared to show a continuing threat to federally protected rights.<sup>114</sup>

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the litigation may desire to reach a more effective, consensual resolution to their dispute by involving such nonparties in negotiations designed ultimately to lead to a settlement agreement. If the agreement is to have the effect of a binding judgment on everyone involved, parties and nonparties alike must consent to its approval as the court's judgment in the case. The Third Circuit's decision in *Sansom Committee* facilitates such negotiated decisionmaking by imposing no additional jurisdictional requirements on the court's power to adjudicate the rights of such potential intervenors. *See* 735 F.2d at 1539.

113. For a discussion of the relationship of the Third Circuit's jurisdictional test under *Pacific Railroad* to established principles governing the power of federal courts to impose equitable remedies, see *supra* notes 74-79 and accompanying text.

114. *See* 735 F.2d at 1545-46. (Becker, J., concurring).