Federal Courts–Prosecution of Officers under the Civil Rights Act

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controlling when in direct conflict with state law. However, in
Ragan the Court held that the local state policy was controlling
when in conflict with federal rule three. In the principal case,
the district court upheld the spirit of the Hanna decision, declaring
that federal rule three is controlling when in conflict with state law.

Although the decision in the principal case supplements Hanna
and seems to be moving toward the establishment of uniformity
in the federal courts in matters of procedure, the picture is still
very cloudy. Since Hanna did not expressly overrule the decision
in Ragan, all one can do is speculate what future decisions of the
Supreme Court will be in this area. Until a final determination of
this question, the prudent attorney will protect his client by
meeting the requirements of both the federal and state rule.

William Jack Stevens

Federal Courts—Prosecution of Officers under the Civil Rights Acts

D's, a county attorney and his deputy, filed and prosecuted a
complaint charging P, a sixteen year old girl, with first degree
murder. Following her arrest, P alleged that she was confined to
a drunk tank for twenty-five days without a preliminary hearing.
Moreover, P claimed she was taken outside the county in further-
ance of an unsuccessful attempt to obtain her confession. P also
was allegedly taken to the scene of the crime where attempts
were made to intimidate her into confessing. Upon being released,
P filed a complaint charging that Ds, while acting under color of
state law, exceeded their jurisdiction and deprived her of rights
secured by the federal constitution. The United States District
Court dismissed the complaint for lack of jurisdiction. The federal
appellate court ruled that the real issue was whether P had stated
a claim upon which relief could be granted. Held, reversed. The
complaint did state a cause of action. Ds, as prosecuting attorneys,
are entitled to a limited immunity because of their quasi-judicial
roles. However, if a prosecuting attorney commits acts which are
related to police activity as opposed to judicial activity, the cloak
of immunity no longer protects him. Here, if Ds alleged acts
were in the nature of police acts, they clearly were beyond the
§ 1983 (1958) grants federal courts the jurisdiction to hear cases

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brought by persons whose constitutional rights have been violated by wrongdoers acting under color of state law. *Robichaud v. Ronan*, 351 F.2d 533 (9th Cir. 1965).

Courts have created a distinction between acts of public officers which are regarded as discretionary or quasi-judicial and those which are ministerial. Those acts which are quasi-judicial in character require personal deliberation and judgment, while those which are ministerial amount only to an obedience to orders. Only those officers who perform quasi-judicial acts are afforded a certain degree of immunity in their performance. The acts of a prosecuting attorney fall within this characterization. *Prosser, Torts* § 126 (3d ed. 1964). However, if a prosecuting attorney acts beyond the scope of his authority, he is no longer clothed with immunity and is subject to liability just as an ordinary citizen would be. *Lewis v. Brautigam*, 227 F.2d 124 (5th Cir. 1955).

The determination of whether state officers have exceeded the scope of their authority, thus becoming subject to liability, traditionally has been a question which state courts have handled. However, recent cases dealing with this topic indicate a significant trend — that of federal courts taking jurisdiction without exhaustion of state remedies. This trend is the result of the application of the Civil Rights Acts. *Monroe v. Pape*, 365 U.S. 167 (1961); *Roberts v. Trapnell*, 213 F. Supp. 49 (E.D. Pa. 1962).

The Civil Rights Acts are the result of the War Between the States. In order to protect the rights of newly freed Negroes, Congress enacted five statutes, collectively called the Civil Rights Acts. Today, although most of the provisions have been repealed or greatly limited, some important remnants remain. 49 CALIF. L. REV. 145 (1961). Among those remaining are two sections, 18 U.S.C. § 242 (1958) and 42 U.S.C. § 1983 (1958), which give the federal courts jurisdiction of claims growing out of a deprivation of the rights of any person by an officer acting under the color of state law. The former section provides for a criminal action for such deprivation while the latter makes possible a civil suit.

For many years following the War Between the States the courts struggled with the question of whether the Civil Rights Acts were intended to provide a federal remedy if the state courts provided a like remedy. Lower federal courts initially held that the acts did not provide a concurrent federal remedy. 1961 *Duke L. J.*
452, 455. However, more recent decisions have held that a supplementary federal remedy was intended. *McNeese v. Board of Educ.*, 373 U.S. 668, 671, (1962); *Monroe v. Pape*, *supra*.

The first Supreme Court case holding that the Civil Rights Acts did give federal courts a supplementary remedy with state courts was *United States v. Classic*, 313 U.S. 299 (1941). In this case the Court held that state election officials acted under the color of state law within the meaning of section twenty of the Criminal Code, now 18 U.S.C. § 424 (1958), when they altered ballots in a federal election in contravention of a state law.

In *Screws v. United States*, 325 U.S. 91 (1945), the Court reaffirmed the interpretation in *United States v. Classic*, *supra*, given to section twenty of the Criminal Code. Alfange, *Under Color of Law: Classic and Screws Revisited*, 47 CORNELL L. Q. 395, 406 (1962). The Court held that police officers acted "under color of state law" when they maliciously assaulted a prisoner while arresting him. However, a vigorous dissent in this five-four decision was based on the argument that the Civil Rights Acts were not intended to provide a federal remedy when a state officer was subject to punishment in a state court.

After the Supreme Court decisions in *Screws* and *Classic*, several lower courts extended the Supreme Court's application of criminal liability for wrongful acts committed under color of state law to the civil liability provisions of the Civil Rights Acts, 42 U. S. C. § 1983 (1958). 1961 Duke L. J., *supra* at 456. In *Lewis v. Brautigan*, *supra*, the court held that a quasi-judicial officer, such as a prosecuting attorney, acting outside the scope of his jurisdiction and without authority of law, cannot shelter himself from liability to private citizens under the Civil Rights Acts by a plea that he was acting under color of office. Other courts, however, took a more restrictive view of the application of the Civil Rights Acts. In *Stift v. Lynch*, 267 F.2d 237 (7th Cir. 1959), the court held that state attorneys and assistant state attorneys were immune to civil actions under the Civil Rights Acts for their actions in connection with official prosecutions. The court rejected the holding in *Lewis v. Brautigan*, *supra*, because the great weight of authority was contrary.

The culmination of this controversy came with *Monroe v. Pape*, *supra*, a case involving the prosecution of policemen who had
committed unauthorized acts. The Supreme Court held that the misuse of power possessed by virtue of state law and made possible because the wrongdoer was clothed with authority of state law can be prosecuted under 42 U.S.C. § 1983 (1958). With reference to the statutes in question, the Court stated that one reason for this legislation was to give federal courts the right to pass judgment without exhaustion of state remedies where state remedies might not be enforced. Therefore, this case confers original jurisdiction of civil suits in federal courts when brought under the Civil Rights Acts. 1961 DUKE L. J., supra at 457.

As a result of Monroe v. Pape, federal courts have applied the Civil Rights Acts with increasing liberality in cases involving wrongful acts committed under color of state law. In Roberts v. Trapnell, supra, the court held that an allegation of facts constituting a deprivation, made under color of state authority, of a right guaranteed by the fourteenth amendment is all that is necessary to state a cause of action. Others cases similarly holding include Stringer v. Dilger, 313 F.2d 536 (10th Cir. 1963); Bargainer v. Michal, 233 F. Supp. 270 (N.D. Ohio 1964); Beauregard v. Wingard, 230 F. Supp. 167 (S.D. Cal. 1964).

The trend as indicated has been toward a more liberal application of the Civil Rights Acts by the federal courts. The principal case supports this trend. A quasi-judicial officer on the federal level may no longer be shielded from liability when he exceeds his authority. The effect of 42 U.S.C. § 1983 (1958) is to allow district courts to sit in judgment of activities of officials on all levels of state and local governments. 49 CALIF. L. REV., supra at 170. Exhaustion of state remedies is no longer required.

States apparently are reluctant to relinquish original jurisdiction of cases involving officers who have violated a person's rights while acting under color of state law. However, the Civil Rights Acts were passed to afford persons a federal right when because of "prejudice, passion, neglect, intolerance, or otherwise, state laws might not be enforced," Monroe v. Pape, supra, and citizens would be denied rights secured by the federal constitution. Yet, where a state promptly prosecutes violators, it may be contended properly that the federal government should not take jurisdiction. 47 CORNELL L. Q. 395 (1961). Until this is done in all the states, however,
the Civil Rights Acts apparently will be applied whenever a public officer exceeds his authority.

Hazel Armenta Straub

Income Tax—Corporate Reorganizations-Spin-offs

A corporation had been engaged in the manufacture and sale of agricultural machinery for several years. Most of its business was concentrated in the Midwest, and it had been conducting operations in the Northeast for only three years. The corporation formed a subsidiary and transferred all of the assets used in its Northeastern operations to the subsidiary. The subsidiary took over all operations formerly conducted by the parent in the Northeast, and the parent immediately ceased all operations in that part of the country. One month after the new corporation was formed the parent corporation distributed to its stockholders all of its stock in the subsidiary. There were valid business reasons for the entire transaction, and tax avoidance was not a motivating factor. The Tax Court held that receipt of the stock constituted taxable income to the stockholders. Held, reversed. This transaction met all the requisites for a tax-free distribution under section 355 of the Internal Revenue Code. *Estate of Lockwood v. Commissioner*, 350 F.2d 712 (8th Cir. 1965).

Section 355 of the Internal Revenue Code of 1954 represents the main statutory provision for the non-recognition of gain or loss at the shareholder level when there is a corporate divisive reorganization and a distribution of stock or securities made by the corporation to the shareholders. Corporate reorganizations under section 355 have been classified as "spin-offs," "split-offs" and "split-ups." The Code does not use these terms, and there is no official sanction for this classification. These three types of reorganization are discussed in *Chester E. Spangler*, 18 T.C. 976 (1952). A spin-off occurs when assets of a corporation are transferred to a subsidiary corporation and the stock or securities in the subsidiary are distributed to the shareholders of the parent corporation without a surrender of stock or securities by the shareholders. In a split-off the shareholders surrender a part of their stock or securities in the parent corporation for stock or securities of a subsidiary corporation. A split-up occurs when the parent corporation transfers its assets