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# Civil Rights: Are Private Conspiracies Redressable in Federal Courts?

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dictates that insurance policies must comply with public policy. However, because of the apparent conflict between the No-Fault Statute and the Uninsured Motorist Statute as interpreted by the Supreme Court in *Mullis*, it is unclear exactly what the present public policy is concerning the specific exclusion of coverage in the instant case.

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## CIVIL RIGHTS: ARE PRIVATE CONSPIRACIES REDRESSABLE IN FEDERAL COURTS?

Petitioners, Negro citizens of Mississippi, filed an action for damages in the United States District Court for the Southern District of Mississippi. The complaint alleged that respondents, certain white citizens of Mississippi, conspired to assault the petitioners, who were traveling upon the highways of Kemper County, Mississippi, near the Mississippi-Alabama border. Petitioners further alleged that, pursuant to the conspiracy, the respondents, mistakenly believing the driver of petitioners' vehicle to be a civil rights worker, blocked their passage on the public highways, and, threatening murder, forced them from the car and inflicted serious physical injury by clubbing them while holding them at gunpoint. Petitioners sought to invoke federal jurisdiction under the language of 42 U.S.C. section 1985(3).[1] The District Court dismissed the complaint for failure to state a cause of action, relying on *Collins v. Hardyman*,[2] in which 42 U.S.C. section 1985 (3) was construed as reaching only conspiracies under color of state law.[3] The Court of Appeals affirmed,[4] and certiorari was granted. The Supreme Court of the United States *held*, re-

1. 42 U.S.C. § 1985(3) (1965) provides:

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

2. 341 U.S. 651 (1951).

3. The standard definition is found in United States v. Classic, 313 U.S. 299, 326 (1941):

> Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken under color of state law.

In cases involving civil rights, "under color" of law has been consistently equated with the "state action" requirement of the fourteenth amendment. *See, e.g.*, Terry v. Adams, 345 U.S. 461 (1953); Smith v. Allwright, 321 U.S. 649 (1944); Hampton v. City of Jacksonville, 304 F.2d 320 (5th Cir. 1962).

4. Griffin v. Breckinridge, 410 F.2d 817 (5th Cir. 1969).

versed and remanded: 42 U.S.C. section 1985(3) reaches private conspiracies. *Griffin v. Breckinridge,* 91 S. Ct. 1790 (1971).

The use of the civil rights statutes to introduce claims founded upon common law torts[5] into the federal judiciary has been one prime exception to the trend toward limiting accessability into the federal courts.[6] *Griffin v. Breckinridge* requires close scrutiny to determine whether the Supreme Court, in recognizing the applicability of 42 U.S.C. section 1985 to purely private conspiracies, has in fact greatly expanded this entrance to the federal judicial system.

The basic question in *Griffin v. Breckinridge*[7] can be stated simply enough: Does 42 U.S.C. section 1985(3) reach private conspiracies? An affirmative answer to this basic question, however, gives rise to another question of far greater complexity: What is the constitutional source of power that permits Congress to reach purely private conspiracies?

The first question is answered affirmatively on three bases: a plain reading of the statute, its legislative history, and the evolution of decisional law in the twenty years since *Collins v. Hardyman.*[8] Nowhere does the language of section 1985(3) indicate a state-action requirement. "On their face, the words of the statute fully encompass the conduct of private persons."[9] Moreover, the "going in disguise" language of section 1985(3) is viewed by the Court as an implication of private action.

> Going in disguise, in particular, is in this context an activity so little associated with official action and so commonly connected with private marauders that this clause could almost never be applicable under the artificially restrictive construction of *Collins*. And since the "going in disguise" aspect must include

5. The three federal statutes allowing civil actions for damages are 42 U.S.C. § 1983, § 1985, and § 1986 (1970). Section 1983 grants an action to any person deprived of a right, privilege, or immunity secured by the United States Constitution or laws. This section has been the most useful of the three in providing a vehicle for asserting federal jurisdiction. See Monroe v. Pape, 365 U.S. 167 (1961) for a comprehensive treatment of the wide range of applicability of § 1983. Section 1985 consists of three subsections, the third of which is set out in part in note 1 *supra*. The first section of § 1985 deals with conspiracy to prevent a federal officer from performing his duties; the second part deals with conspiracies to obstruct justice. Section 1986 authorizes a civil action for damages against anyone who, having the power of authority to do so, knowingly fails to prevent the commission of one of the wrongs specified in § 1985. Section 1985(3) would, in this interpretation, cover private actions by two or more individuals; section 1983 would cover all actions under color of state law.

6. The two basic grounds for asserting federal jurisdiction are federal question and diversity of citizenship. Attempts to limit the intake of the federal courts are numerous. For example, the amount in controversy necessary to assert diversity jurisdiction has steadily increased from the original $500 to the current "in excess of $10,000" requirement of 28 U.S.C. § 1332(a) (1970). Federal question jurisdiction must appear from the complaint, well-pleaded, not the complaint and answer taken as a whole. Louisville and Nashville R.R. v. Mottley, 211 U.S. 149 (1908). *See also* Younger v. Harris, 91 S. Ct. 1790 (1971) and its companion cases, noted in 25 U. MIAMI L. REV. 506 (1971).

7. 91 S. Ct. 1790 (1971).

8. 341 U.S. 651 (1951).

9. Griffin v. Breckinridge, 91 S. Ct. 1790, 1795 (1971).

> private action, it is hard to see how the conspiracy aspect . . . could be read to require the involvement of state officers.[10]

Continuing with its appraisal of the language of the statute, the Court reasons that "the failure to mention any such requisite [state-action] can be viewed as an important indication of congressional intent to speak in § 1985(3) of all deprivations of 'equal protection of the laws' and equal privileges and immunities under the laws, whatever their source."[11] Since a necessary element for a cause of action under section 1983 is that the deprivation must have been inflicted under color of state law, "[t]o read any such requirement into § 1985(3) would thus deprive that section of all independent effect."[12]

The legislative history of section 1985(3) is also employed as a basis for including private conspiracies under the aegis of the statute. After considering the statements of the proponents of the original measure,[13] the Court concludes that: "It is thus evident that all indicators—text, companion provisions, and legislative history—point unwaveringly to § 1985(3)'s coverage of private conspiracies."[14]

Of the three bases that the Court uses to apply section 1985(3) to private conspiracies, the trend of decisional law is the most powerful. This trend has clearly been toward encompassing the activities of private individuals within the Civil Rights Statutes. As the *Griffin* Court stated, "the approach . . . to other Reconstruction civil rights statutes in the years since *Collins* has been to 'accord [them] a sweep as broad as [their] language.' "[15]

The decisional law of the past twenty years reveals two basic methods of introducing suits stemming from acts of private citizens into the federal judiciary: first, the concept of "color of state law" has been expanded so as to cover the actions alleged in a particular circumstance;[16] second, constitutional power sources other than the fourteenth amendment may be employed to render federal statutes applicable to a given factual situation.[17]

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10. *Id.*

11. *Id.* at 1796.

12. *Id.* at 1797.

13. The bill originally provided criminal sanctions for conspiracies resulting in either murder, manslaughter, mayhem, robbery, assault and battery, perjury, subornation of perjury, criminal obstruction of legal process or resistance of officers in discharge of official duty, arson, or larceny. . . .

CONG. GLOBE, 42nd Cong., 1st Sess. 68-69 (1871).

14. Griffin v. Breckinridge, 91 S. Ct. 1790, 1798 (1971).

15. *Id.* at 1796.

16. *See, e.g.*, United States v. Guest, 383 U.S. 745 (1966), dealing with the criminal counterpart of § 1985(3); 18 U.S.C. § 241 (1970); and Shelley v. Kraemer, 334 U.S. 1 (1948).

17. The classic case of this type is Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968), which held that 42 U.S.C. section 1982 was applicable, on the basis of the thirteenth amendment, to all racial discrimination in the public or private sale or rental of realty.

The construction of section 1985(3) in *Collins v. Hardyman*[18] was influenced by "constitutional problems of the first magnitude . . . ."[19] If, as it has been consistently held, the fourteenth amendment guards against state action,[20] how could Congress provide a remedy for individual actions without infringing on the reserved powers of the States under the tenth amendment?[21] The dissent in *Collins* revealed two possible constitutional approaches to extending section 1985(3) to reach private conspiracies. Such a construction could be based either upon the principles underlying the fourteenth amendment, or upon the basis of supporting rights which exist apart from the fourteenth amendment.[22]

In *Griffin*, after deciding that section 1985(3) was designed to reach private conspiracies, the Court adopted the second suggestion of the *Collins* dissent:[23] section 1985(3) reaches private conspiracies through the thirteenth amendment.[24] The decision thus falls into the class of cases providing relief by finding a statute applicable on other than fourteenth amendment grounds.[25] The fact that *Griffin* does fall into this class is of great importance, as such a finding severely limits the scope of the decision.

The assumption underlying legislation that flows from the thirteenth amendment's prohibition of slavery is that "Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation."[26] On this basis, *Collins v. Hardyman*,[27] in which the victims of the alleged deprivation of rights were members of a white political club, allegedly assaulted by other whites, would be decided in the same manner under the *Griffin* decision. In *Griffin* the Court establishes as an element of a cause of action under section 1985(3), that "there must be some racial, *or perhaps otherwise class-based,* invidiously discriminatory animus behind the conspirators' action."[28] Nonetheless, by basing the decision on the thirteenth amendment and Congress's power to determine the badges and incidents of slavery, the

18. 341 U.S. 651 (1951).

19. *Id.* at 659.

20. United States v. Price, 383 U.S. 787 (1966); Civil Rights Cases, 109 U.S. 3 (1883); United States v. Cruikshank, 92 U.S. 542 (1875). *But see*, notes 33-36 *infra* and accompanying text.

21. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X.

22. Collins v. Hardyman, 341 U.S. 651, 664 (1951) (dissenting opinion).

23. *Id.*

24. Griffin v. Breckinridge, 91 S. Ct. 1790, 1800 (1971).

25. In this respect, Griffin is more clearly related to Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968) than to any other civil rights decision.

26. Jones v. Alfred H. Mayer Co., 392 U.S. 409, 440 (1968).

27. 341 U.S. 651 (1951).

28. Griffin v. Breckinridge, 91 S. Ct. 1790, 1798 (1971) (emphasis added).

decision cannot be construed as being applicable to a non-racial factual situation such as existed in *Collins*.

Thus, the *Griffin* decision in no manner transforms section 1985(3) into a general federal tort law. Since the Court specifically limits its decision to the factual situation at hand, the only constitutional considerations involved are those dealing with the question of whether Congress had the power to enact a statute that imposes liability under federal law "for the conduct alleged *in this complaint*."[29] The Court states that "we need not find the language of § 1985(3) now before us constitutional in all its possible appplications in order to uphold its facial constitutionality and its application to the complaint *in this case*."[30]

The concluding paragraphs of the decision afford a second constitutional source of power through which section 1985(3) can reach purely private conspiracies—the right of interstate travel.[31] The constitutional foundation for such a construction of section 1985(3) is also clearly limited to the factual setting of the case, as the complaint alleged events transpiring in the vicinity of the border of two states.

While *Griffin v. Breckinridge* is closely restricted to its immediate facts, and thus cannot be deemed to create a broad avenue of accessibility to the federal judiciary, the case cannot be considered a unique occurrence. The Court closely followed the maxim of not deciding more than necessary:

> In identifying these two constitutional sources of congressional power, we do not imply the absence of any other. More specifically, the allegations of the complaint in this case have not required consideration of the scope of the power of Congress under § 5 of the Fourteenth Amendment. By the same token, since the allegations of the complaint bring this cause of action so close to the constitutionally authorized core of the statute, there has been no occasion here to trace out its constitutionally permissible periphery.[32]

This comment on section five of the fourteenth amendment[33] may prove to be indicative of the course that the Court will take in dealing with future Civil Rights Statute situations. In 1966, six members seemed to agree that "§ 5 empowers the Congress to enact laws punishing all conspiracies—with or without state action—that interfere with Fourteenth Amendment rights."[34] Four years later, however, in *Adickes v. S. H. Kress*

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29. *Id.* at 1799 (emphasis added).

30. *Id.* (emphasis added).

31. *Id.* at 1800. *See* Edwards v. California, 314 U.S. 160 (1941); Twining v. New Jersey, 211 U.S. 78 (1908); Crandall v. Nevada, 73 U.S. (6 Wall.) 35 (1867).

32. Griffin v. Breckinridge, 91 S.Ct. 1790, 1801 (1971).

33. "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." U.S. CONST. amend. XIV § 5.

34. United States v. Guest, 383 U.S. 745, 762 (1966) (concurring opinion of Clark); *See also* Justice Brennan's opinion, concurring in part and dissenting in part. *Id.* at 782.

*& Co.*,[35] the decision was that "[S]tate action [is] essential to show a direct violation of . . . Fourteenth Amendment equal protection rights . . . ."[36] The fact that the Court skirted any decision in *Griffin* on the contention that section five of the fourteenth amendment empowers Congress to reach purely private actions may indicate that this avenue of expansion may not have been as completely rejected as *Adickes* would seem to indicate.

Therefore, the *Griffin* decision must be viewed both as a culmination of the decisional law in this area over the past twenty years as well as an indication that private conspiracies, on a case-by-case basis, may be redressable in the federal courts under 42 U.S.C. section 1985(3). In addition, *Griffin v. Breckinridge* may indicate that future expansion of the scope of the Civil Rights Statutes under section five of the fourteenth amendment is still a possibility.

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## DAMAGE REMEDY FOR FEDERAL VIOLATION OF FOURTH AMENDMENT RIGHTS: BELL v. HOOD, CHAPTER TWO

Plaintiff brought an action in a federal district court for damages alleging that federal officers acting under color of federal law had violated his fourth amendment rights. Defendants, federal narcotics agents, had entered and searched plaintiff's apartment without a warrant and had manacled and humiliated the plaintiff in the presence of his family. The defendants threatened the members of the entire household with arrest and later interrogated, booked, and strip-searched the plaintiff at the federal courthouse. The district court dismissed the action on two grounds: lack of subject matter jurisdiction and want of a claim upon which relief might be granted.[1] On appeal, the Court of Appeals for the Second Circuit[2] ruled that the district court did have jurisdiction over the subject matter,[3] but affirmed on the grounds that the plaintiff had not set forth a claim upon which relief might be granted. On certiorari

35. 398 U.S. 144 (1970).

36. *Id.* at 152.

1. Bivens v. 6 Unknown Named Agents Of the Federal Bureau Of Narcotics, 276 F. Supp. 12 (E.D.N.Y. 1967).

2. Bivens v. Six Unknown Named Agents Of the Federal Bureau Of Narcotics, 409 F.2d 718 (2d Cir. 1969).

3. *Id.* at 720. The court based its conclusion on Bell v. Hood, 327 U.S. 678 (1946), where it was held that a "complaint . . . drawn as to seek recovery directly under the Constitution or laws of the United States, . . ." constitutes a federal question so as to confer jurisdiction on the court. *Bell* at 681-82. The Court also held that "the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction." *Bell* at 682.