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Complete With Accessories

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In *Pierson v. Ray*, supra, a group of black clergymen brought suit against a police Court Judge for false arrest and violation of Section 1983. The clergymen had attempted to use a "white only" waiting room in a Jackson, Mississippi bus terminal and were arrested and convicted of violating a state breach of the peace statute, MISS. CODE ANN. 62087.5 (Supp. 1971). The majority found the Police Court Judge absolutely immune from suit under Section 1983, and based its decision on the belief that judicial immunity was a well established principle of common law. Further, the Court found the doctrine firmly entrenched within the legislative history of Section 1 of the Civil Rights Act. 386 U.S. at 553-554.

Justice Douglas severely criticized the majority's reliance on the legislative history of Section 1 of the Civil Rights Act. 386 U.S. at 547, 559-563. Douglas suggested that Congress recognized and accepted the fact that State Court Judges would not be immune from actions based on Section 1 of the Act. The maladministration of justice was due to the impartial administration of law and equity and providing broad immunity would only serve to foster this problem. 386 U.S. at 559.

However, *Pierson v. Ray*, supra, has been the governing rule despite the questionable legislative record. While courts have qualified the immunity doctrine with respect to executive, administrative, and other quasi judicial officers, they have consistently upheld judicial immunity as prohibiting Section 1983 suits against judges.

—Roxane N. Sokolove

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**Recent Decisions**

**Complete with Accessories**

The Court of Appeals, in the case of *State v. Williamson*, 282 Md. 100, 382 A.2d 588 (1978), has held that an accessory before the fact may be indicted and convicted of first degree murder under the form of indictment prescribed in MD. ANN. CODE, Art. 27, §616(a), and that the indictment need not distinguish between principals and accessories in order for the conviction to be upheld.

Joyce Marcine Williamson was convicted by a Baltimore County jury of first degree murder and other charges arising from the death of her husband outside of their home on October 5, 1975. According to the findings of the jury, defendant Williamson hired one Lawrence Merrick to murder her husband; Merrick subsequently beat Mr. Williamson to death in a parked car in the driveway of his home on the date in question. The evidence indicated that following a period of negotiation with someone who ultimately refused to commit the murder defendant, with the assistance of her brother, then arranged for the hiring of Merrick. There was, however, no evidence adduced at trial to indicate that defendant assisted Merrick in any way on the night of the murder, or that she was in a position to aid him in any way, or even that she was awake at the time of the murder. Concluding that there was no constructive presence of the defendant at the scene of the crime, the Court of Special Appeals held that the evidence was insufficient to show that Williamson was a principal in the murder of her husband and reversed the conviction. The issue then presented by the state to the Court of Appeals on a writ of certiorari was whether a defendant can be convicted of first degree murder when he has hired someone else to commit the murder and is therefore an accessory before the fact.

The Court of Appeals held that the abbreviated form of indictment for murder prescribed for in MD. ANN. CODE, Art. 27, §616 (a) allows for a conviction of murder when proof of either accessoryship or principalship is adduced, and thereby reversed the Court of Special Appeals.

At common law, distinctions were drawn between accessories and principals for reasons which even today remain unclear. A popular suggestion has been made that the doctrine of accessoryship was created by early common law judges in an effort to alleviate, in certain cases, the severity of the rule that all felonies were punishable by death. An accessory before the fact is one who procures, counsels or commands the commission of the criminal offense but is absent from the scene of the crime at the time of its commission. A principal may be of two degrees: a principal in the first degree being one who commits

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1 See *Schuer v. Rhodes* 416 U.S. 232 (1974) where personal representatives of the estates of students who died in the Kent State tragedy brought suit under 42 U.S.C. §1983 against the Governor of Ohio. Chief Justice Berger, after finding the suit not barred by the 11th Amendment, held that state officers had a qualified, not absolute immunity, the degree of qualification "being dependent upon the scope of discretion and responsibilities of the office and the circumstances as they reasonably appeared at the time of the action on which liability is sought to be based." 416 U.S. at 247.
such in the indictment and were therefore given notice of the
cessories in several ways: (1) accessories were distinguished as
such in the indictment and were therefore given notice of the
nature and seriousness of the charges against them, (2) acces-
sories, in most cases, were allowed the benefit of clergy and (3)
accessories could not be tried until after the principal was con-
victed.

Although Mrs. Williamson’s contention that she could not
have been convicted of first degree murder because the state
did not establish her constructive presence at the scene of the
crime raised the question of the applicability of the common law
distinctions between principal and accessory to Maryland case
law, the Court of Appeals found it unnecessary to determine
whether these common law distinctions are still in effect in
Maryland. According to the narrow holding of the court, Mrs.
Williamson “having been indicted for the murder of her hus-
band in a form which permitted proof either that she was a
principal or an accessory, and the evidence adduced having
been sufficient to convict her as an accessory before the fact,
there was no error.”

The interesting aspect of Williamson is not so much the
narrow disposition of the case itself, but rather what it might
have been had a majority squarely faced those very issues
which it successfully avoided. Had the express language of
§616 (a) not provided the necessary grounds for upholding Mrs.
Williamson’s conviction, the Court of Appeals might have
been able to take advantage of the opportunity to lift the
burdens which the common law distinctions continue to
impose upon Maryland criminal courts. As outlined briefly in
the concurring opinion to Williamson, under this common law
view, accessories could be tried only in the jurisdiction where
the act of accessory was committed, without regard to
where the felony itself was committed; if the principal was
acquitted or never discovered, the accessory could never be
brought to trial; and one charged as a principal cannot be
convicted as an accessory if the evidence shows only that he
had acted as an accessory before the fact. The opinion
suggests as well that the constitutional restraints upon the use
of the death penalty in recent years have rendered void the his-
torical foundations upon which the common law distinctions
were originally founded. Maryland is indeed the only state
which has not modified the common law in some respect; all
other jurisdictions have to some extent taken measures (either
by statutory enactment or by judicial decision) to erase the
restrictions which the common law parties to crime had
imposed upon them. For the most part this has been accom-
plished without any noticeable detrimental effect on the rights
of defendants and to the added benefits of judicial efficiency
and, to some extent, simplicity.

There is, however, no indication either in Williamson or in
any preceding case that the common law rules have been
modified in Maryland at all, and it seems, therefore, that the
doctrine of accessoryship continues to remain the law in
Maryland. This will be the case until either legislation or a
Court of Appeals decision finally inter this persistent rem-
nant from our legal past. Perhaps the needlessness of the doc-
trine is best summarized by a passage from Bishop’s Criminal
Law as quoted in the concurring opinion to Williamson:
“This distinguishing of the accessory before the fact from
the principal is a pure technicality. It has no existence either in
natural reason or the ordinary doctrines of the law. For in
natural reason the procurer of a crime is not chargeable dif-
ferently from the doer; and a familiar rule of the common law
is that what one does through another’s agency is regarded as
done by himself...”

—James F. Kuhn

Licensee, Invitee and
Trespasser: Archaic Classes?

In a 5-2 decision, the Court of Appeals decided that the
abolition of the common law classifications of invitee, licensee
and trespasser in considering the liability of a property owner
was not properly preserved for appeal. The majority in
Sherman v. Suburban Trust Company, 262 Md. 238, 384 A.2d
76 (1978), asserted that they were precluded from considering
the question because of Plaintiff’s failure to request a jury
instruction specifically predating the tort liability of an owner
or occupier of land upon principles of ordinary negligence as
opposed to the technical classifications of invitee, licensee, and
trespasser. The dissenting opinion, however, asserted that the
issue was proper and that the common law distinctions should
be abolished.

In this case, the Court of Appeals was confronted with the
question of whether the property owner owed a duty to a police
officer injured on a nonpublic segment of an owner’s premises
while in his official capacity.

The plaintiff, a plainclothes policeman on patrol, received a
radio call that an attempt was being made to negotiate a forged
check at the Suburban Trust Company (defendant). After
identifying himself and another to the bank teller, he and his
fellow officer were permitted to enter the six by eight foot
teller’s cage. The teller accidentally dropped the alleged forged
check onto the floor. Attempting to pick up the check, the
Plaintiff stepped back two or three feet. As he did so the officer
struck part of his body on the coin changing machine’s scoop
arm, which he did not see.

The plaintiff in this case sued the Bank claiming in part that
the defendant “...failed to give adequate warning of its (the
coin changing machine’s) placement and further placed it in a
negligent position where it could cause injury to individuals...”

The plaintiff excepted to the Circuit Court’s jury instruction
and claimed that a police officer was either an invitee or in a
class sui generis, and was not a licensee. The plaintiff sought an
instruction that would give the Bank an affirmative duty both to
ercise ordinary care to keep the premises reasonably safe
for him and to refrain from negligence.

According to the present law in Maryland, the liability of a
property owner to an injured party is dependent upon whether
the latter is an invitee, licensee or trespasser. After the injured
party is classified, the courts then apply the appropriate
standard of care.

In Maryland, a trespasser is generally one who enters or re-
mains upon land of another without privilege to do so. The
tresper takes the property as he finds it in so far as any alleged
defective condition may exist on the property. The possessor
of the land owes him only the duty of refraining from wanton or

A licensee is a person who enters the property with the
knowledge and consent of the owner and for the licensee’s own