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Constitutional Law - The Speech or Debate Clause and Immunity for Congressional Aides

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Recent Decisions

CONSTITUTIONAL LAW—THE SPEECH OR DEBATE CLAUSE AND IMMUNITY FOR CONGRESSIONAL AIDES—The United States Supreme Court has held that the speech or debate clause applies to congressional aides, insofar as the aides conduct would be a protected legislative act if performed by the Member himself; but it does not extend immunity to the Member's aide when testifying before a grand jury about acts done by the Member or himself, if such inquiry does not impinge upon the legislative process, and proves relevant to investigating possible third party crimes.

Gravel v. United States, 408 U.S. 606 (1972).

A United States Senator read to a subcommittee from classified documents,[1] which he then placed in the public record.[2] A grand jury,[3] investigating whether violations of federal laws were implicated,[4] suppoenaed an aide[5] to the Senator. The Senator, as an intervenor, moved to quash the subpoena, contending a violation of the speech or debate clause would occur if the aide were compelled to testify.[6]

The district court denied[7] the motion, but issued a protective order[8]

1. The classified documents were a study by the Department of Defense entitled "History of U.S. Decision-Making Process on Viet Nam Policy," popularly called the Pentagon Papers. *See* United States v. Doe, 332 F. Supp. 930, 931-32 (D. Mass. 1971).

2. Gravel v. United States, 408 U.S. 606, 609, *vacating & remanding* United States v. Doe, 455 F.2d 753 (1st Cir. 1972).

At the conclusion of the meeting, Senator Gravel placed the entire study of forty-seven volumes on file with the subcommittee, thereby making it widely available to the press. 332 F. Supp. at 933.

3. A federal grand jury had been conducting a valid investigation of the release and publication of the Pentagon Papers when this case arose. 408 U.S. at 608, 626.

4. 408 U.S. at 608. The crime being investigated included the retention of public property or records with intent to convert, 18 U.S.C. § 641 (1970), the gathering and transmitting of national defense information, 18 U.S.C. § 793 (1970), the concealment or removal of public records or documents, 18 U.S.C. § 2071 (1970), and conspiracy to commit such offenses and to defraud the United States, 18 U.S.C. § 371 (1970).

5. The aide, who had been added to the Senator's staff earlier in the day, was Dr. Leonard S. Rodberg, a resident fellow at the Institute of Policy Studies. 408 U.S. at 608-09.

6. *Id.*

7. 332 F. Supp. at 938.

8. The protective order reads as follows:

(1) No witness before the grand jury currently investigating the release of the Pentagon Papers may be questioned about Senator Mike Gravel's conduct at a meeting of the Subcommittee on Public Buildings and Grounds on June 29, 1971, nor about things done by the Senator in preparation for and intimately related to said meeting.

(2) Dr. Leonard S. Rodberg may not be questioned about his own actions on June

limiting the questioning of the aide.[9] The Court of Appeals for the First Circuit affirmed[10] the lower court's decision, but modified the protective order to prevent questioning about the Senator's efforts to publish the Pentagon Papers.[11] Although it agreed with the district court that private publication of the documents was not constitutionally protected, the court of appeals held that questioning, concerning such publication, of the congressional aide was barred because a common law privilege existed which is similar to the privilege that protects executive officials from liability for libel.[12]

The Supreme Court vacated[13] the judgment of the court of appeals, and remanded[14] the cases to that court because the protective order, issued by the court of appeals, unduly restricted the scope of the grand jury inquiry.[15]

29, 1971 after having been engaged as a member of Senator Gravel's personal staff to the extent that they were taken at the Senator's direction either at a meeting of the Subcommittee on Public Buildings and Grounds or in preparation for and intimately related to said meeting.

332 F. Supp. at 938.

9. The court reasoned that since the Senator could not be prosecuted for legislative acts, the protective order would serve to limit the subject matter being investigated, thereby insuring that no witness would be questioned about the Senator's conduct at the subcommittee meeting, or about acts done by the Senator in preparation for or intimately related to that meeting. 332 F. Supp. at 938. Similarly, the court restricted the questioning of Dr. Rodberg by the grand jury because of the dependence by members of Congress on their assistants. *Id.* at 937.

10. United States v. Doe, 455 F.2d 753, 762 (1st Cir. 1972).

11. The protective order, modified by the court of appeals, reads as follows:

(1) No witness before the grand jury currently investigating the release of the Pentagon Papers may be questioned about Senator Mike Gravel's conduct at a meeting of the Subcommittee on Public Buildings and Grounds on June 29, 1971; nor, if the questions are directed to the motives or purposes behind the Senator's conduct at that meeting, about any communications with him or with his aides regarding the activities of the Senator or his aides during the period of their employment, in preparation for and related to said meeting.

(2) Dr. Leonard Rodberg may not be questioned about his own actions in the broadest sense, including observations and communications, oral or written, by or to him or coming to his attention while being interviewed for, or after having been engaged as a member of Senator Gravel's personal staff to the extent that they were in the course of his employment.

408 U.S. at 612.

12. 455 F.2d at 760. The privilege was based upon Barr v. Matteo, 360 U.S. 564 (1959), which gave absolute immunity to an executive officer for libel contained in a news release. In the instant case, the court granted immunity. "[T]o the extent that a congressman has responsibility to inform his constituents, his performance . . . may be protected from liability by a common law privilege . . . ." *Id.* at 760. The court did not make a determination as to the possible extent of such an immunity for future cases; but it was certain that the immunity applied to republication of the documents. *Id.* at 760-61.

It is not the intention of this casenote to discuss the republication aspects of the *Gravel* case.

13. Gravel v. United States, 408 U.S. 606, 629 (1972).

14. *Id.* The Government's appeal and Senator Gravel's appeal were consolidated upon grant of petitions for certiorari. 405 U.S. 916 (1972).

15. 408 U.S. at 627-28.

Article I of the Constitution[16] supplies the background for the Court's decision: ". . . for any speech or debate in either House . . . [senators and representatives] shall not be questioned in any other place."[17] The speech or debate clause was modeled after the English Bill of Rights,[18] and adopted by the Constitutional Convention without debate or opposition.[19] The judicial history of the clause before the Supreme Court is limited,[20] because, in part, the tradition of legislative privilege is well established in our political system.[21]

Despite this scant history, previous decisions by the Court have established that ". . . the privilege has been recognized as an important protection of the independence and integrity of the legislature . . ."[22] which prevents ". . . prosecution by an unfriendly executive and conviction by a hostile judiciary."[23] Its application is not limited to words spoken in debate,[24] but includes ". . . things generally done in a session of the House by one of its members in relation to business before it."[25] The clause protects members of an investigating committee so long as they act within the sphere of legitimate legislative activity,[26] and pre-

16. U.S. CONST. art. I, § 6.

17. *Id.*

18. The English Bill of Rights of 1689 stated:

That the Freedom of Speech, and Debates or Proceedings in Parliment, ought not to be impeached or questioned in any Court or Place out of Parliment.

United States v. Johnson, 383 U.S. 169, 178 (1966). For an extensive review of the historical origins of the English Bill of Rights, and the speech or debate clause see Cella, *The Doctrine of Legislative Privilege of Freedom of Speech and Debate: Its Past Present and Future as a Bar to Criminal Prosecutions in the Courts*, 2 SUFFOLK L. REV. 1 (1968) [hereinafter cited as Cella]; Yankwich, *The Immunity of Congressional Speech—Its Origin, Meaning and Scope*, 99 U. PA. L. REV. 960 (1951).

19. 383 U.S. at 177.

20. Previous to the October, 1971, term of the Supreme Court five cases had been decided: Powell v. McCormack, 395 U.S. 486 (1969); Dombrowski v. Eastland, 387 U.S. 82 (1967); United States v. Johnson, 383 U.S. 169 (1966); Tenny v. Brandhove, 341 U.S. 367 (1951); Kilbourn v. Thompson, 103 U.S. 168 (1881). Along with *Gravel*, another decision, United States v. Brewster, 408 U.S. 501 (1972), interpreted the speech or debate clause during the 1971 term.

21. 383 U.S. at 179. The Court in Tenny v. Brandhove, 341 U.S. 367 (1951), noted that, "[f]reedom of speech and action in the legislature was taken as a matter of course by those who severed the Colonies from the Crown and founded our Nation . . ." and that, ". . . [t]he provision in the United States Constitution was a reflection of political principles already firmly established in the States." *Id.* at 372-73.

22. United States v. Johnson, 383 U.S. 169 (1966). Thomas Jefferson noted in a petition addressed to the Virginia House of Delegates in 1797 that, ". . . their representatives, in the discharge of their functions, should be free from the cognizance or coercion of the coordinate branches, Judiciary and Executive." Yankwich, *The Immunity of Congressional Speech—Its Origin, Meaning and Scope*, 99 U. PA. L. REV. 960, 962 (1951).

23. 383 U.S. at 179.

24. Kilbourn v. Thompson, 103 U.S. 168 (1881).

25. *Id.* The Court noted that protected activity would include written reports by congressional committee, resolutions, and voting. *Id.*

26. *See* Tenny v. Brandhove, 341 U.S. 367 (1951). In *Brandhove*, the defendant alleged that the committee summoned him to a hearing in which no legislative purpose was

cludes a criminal prosecution which is based upon the substance of a Member's speech delivered before Congress.[27]

In light of this previous history, the Court addressed itself to the question whether legislative immunity should apply equally to a Member and his aide.[28] Mr. Justice White, speaking for the majority,[29] agreed with the lower courts ". . . that for the purpose of construing the privilege a Member and his aide are to be treated as one."[30] The Court recognized that the interrelationship of the work of the congressional aide with the modern legislative process was critical to a Member's performance,[31] and that failure to treat the aide as a Member's alter ego would frustrate and diminish the purpose of the speech or debate clause.[32] At first glance, this conclusion would seem to conflict

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contemplated; and that the hearing was designed to intimidate and silence him to prevent him from exercising his constitutional rights. In deciding that the committee's actions were valid, the Court stated:

> The claim of an unworthy purpose does not destroy the privilege. Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for private indulgence but for the public good . . . . The holding of this Court in Fletcher v. Peck, 6 Cranch 87, 130, that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, has remained unquestioned.

Id. at 377.

27. 383 U.S. at 180. Johnson, a former congressman, was found guilty of conspiracy, whereby he allegedly read a speech favorable to independent savings and loan associations in the House to return for campaign contributions and legal fees. *Id.* at 171-72. The Court, in response to the use of the speech by the Government, stated:

> However reprehensible such conduct may be, we believe the Speech or Debate Clause extends at least so far as to prevent it from being made the basis of a criminal charge against a member of Congress of conspiracy to defraud the United States by impeding the due discharge of government functions. The essence of such a charge in this context is that the Congressman's conduct was improperly motivated, and as will appear that is precisely what the Speech or Debate Clause generally forcloses from executive and judicial inquiry.

Id. at 180.

28. 408 U.S. at 616.

29. Justice White also drafted the opinion in Brazenburg v. Hayes, 408 U.S. 665 (1972), announced on the same day as *Gravel*, which held that grand juries may question newsmen about their sources of information.

30. 408 U.S. at 616. In more precise language, the Court, quoting from United States v. Doe, 332 F. Supp. 930 (D. Mass. 1971), stated:

> . . . the Speech of Debate Clause prohibits inquiry into things done by Dr. Rodberg as the Senator's agent or assistant which would have been legislative acts, therefore privileged, if performed by the Senator personally.

Id. at 937-38.

31. 408 U.S. at 616.

32. *Id.* at 616-17. The Court cited Barr v. Matteo, 360 U.S. 564 (1959), in support of its reasoning which seems to negate statements in previous cases which would have held for an opposite result. *See* Tenny v. Brandhove, 341 U.S. 367 (1951). "It should be noted that this is a case in which the defendants are members of a legislature . . . . Legislative privilege in such a case deserves greater respect. . . ." *Id.* at 378; *accord*, Dombrowski v. Eastland, 387 U.S. 82 (1967) (per curiam). "This Court has held . . . that this doctrine is less absolute, although applicable, when applied to officers or employees of a legislative body, rather than to legislators themselves." *Id.* at 85.

with its prior rulings,[33] but the Court distinguished those situations as being not worthy of speech or debate protection because there the employees were engaged in illegal conduct.[34]

The Court then considered what type of conduct, by a Member or his aide, would be protected.[35] Keeping in mind that the heart of the clause is speech or debate,[36] the Court noted that legislative acts are not all-encompassing,[37] and that the privilege has not been extended beyond the legislative sphere.[38] Therefore, in the words of the Court, for an act, other than speech or debate, to fall within the protection of the clause, the act:

> [m]ust be an integral part of the deliberative and communicative process by which Members participate in committee and House proceedings . . . or with respect to other matters which the Court places within the jurisdiction of either House.[39]

In short, the privilege will be extended ". . . only when necessary to prevent indirect impairment of such deliberations."[40]

The Court then used these guidelines in the determination of which particular acts by the Senator and his aide would receive speech or debate clause protection.[41] It concluded that the clause would preclude questioning of any witness, including the aide, relating to the conduct, or the motives and purposes behind the conduct, of either the Senator or the aide at the subcommittee meeting on June 29, 1971.[42] Furthermore, any communications between the Senator and his aide which related to the subcommittee meeting or any other legislative act by the Senator would also be immune from grand jury inquiry.[43]

The Court specifically excluded from speech or debate clause protection any questioning of the Senator or his aide about acts performed

33. *See* Powell v. McCormack, 395 U.S. 486 (1969) (privilege did not apply to House employees who tried to implement invalid resolution to exclude a representative-elect); Dombrowski v. Eastland, 387 U.S. 82 (1967) (privilege did not apply to a committee counsel who was charged with conspiring with state officials to carry out illegal search and seizure); Kilbourn v. Thompson, 103 U.S. 168 (1881) (privilege unavailable to Sergeant-at-Arms who carried out House resolution authorizing defendant's arrest).
34. 408 U.S. at 620.
35. *Id.* at 624-25.
36. *Id.* at 625.
37. *Id.*
38. *Id.* at 624-25.
39. *Id.* at 625.
40. *Id., quoting* United States v. Doe, 455 F.2d 753, 760 (1st Cir. 1972).
41. 408 U.S. at 628-29.
42. *Id.*
43. *Id.*

in preparation for the subcommittee hearing, if it proves relevant to investigating possible third-party crimes.[44] Therefore, not only the aide, but also a congressman can be forced to testify before a grand jury about his sources of information.[45] Mr. Justice Stewart, dissenting in part,[46] noted that "[t]his critical question was not embraced in the petitions for certiorari. . . . Yet it is a question with profound implications for the effective functioning of the legislative process."[47] Nevertheless, the majority, did not ". . . perceive any constitutional or other privilege that shields . . . any . . . witness from grand jury questions relevant to tracing the source of obviously highly classified documents . . . , as long as no legislative act is implicated by the questions."[48]

In differing with the reasoning of the majority, Mr. Justice Stewart cited the fact that "[i]n preparing for legislative hearings . . . a member of Congress obviously needs the broadest possible range of information."[49] He reasoned that in the future informants would be unwilling to relate such information in the face of possible adverse consequences,[50] thereby inpairing the ability of congressmen to properly perform their constitutional duty.[51] He also agreed with the court of appeals that:

> [t]o allow a grand jury to question a Senator about his sources would chill both the vigor with which legislators seek facts, and the willingness of potential sources to supply them.[52]

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44. *Id.* The Court, earlier in its discussion about immunity for congressional aides, reasoned that:

> The Speech or Debate Clause . . . provides no protection for criminal conduct threatening the security of the person or property of others, whether performed at the direction of the Senator in preparation for or in execution of a legislative act or done without his knowledge or direction. *Neither does it immunize Senator or aide from testifying at trials or grand jury proceedings involving third-party crimes where the questions do not require testimony about or impugn a legislative act.*

Id. at 622 (emphasis added).

45. 408 U.S. 606, 629-30 (1972) (Stewart, J., dissenting).

46. *Id.*

47. *Id.* at 630. The Government asked the Court to consider the following questions:

> Whether Article 1, Section 6, of the Constitution providing that ". . . for any Speech or Debate in either House," the Senator and Representatives "shall not be questioned in any other Place" bars a grand jury from questioning aides of members of Congress and other persons about matters that may touch on activities of a member of Congress which are protected "Speech or Debate."
>
> Whether an aide of a member of Congress has a common-law privilege not to testify before a grand jury concerning private republication of material which his Senator-employer had introduced into the record of a Senate subcommittee.

Id. at 631 n.1.

48. *Id.* at 628.

49. *Id.* at 630.

50. *Id.*

51. *Id.*

52. *Id.* at 630, *quoting* from United States v. Doe, 455 F.2d 753, 758-59 (1st Cir. 1972).

His approach to the question of legislative immunity would involve a balancing of the claims of the speech or debate clause against the claims of the grand jury in the particularized context of the specific case.[53]

Mr. Justice Brennan dissented separately[54] citing the fact that the scope of the immunity was as important as the persons to whom it extends.[55] He pointed out that "[t]he receipt of materials for use in a congressional hearing is an integral part of the preparation for that legislative act . . ."[56] which previously had been acknowledged by the Court as an activity that must be shielded from scrutiny by the executive and judiciary.[57] Therefore, he reasoned that:

> [i]t would accomplish little toward the goal of legislative freedom to exempt an official act from intimidating scrutiny, if other conduct leading up to the act and intimately related to it could be deterred by a similar threat.[58]

The dissenting Justices allude to an apparent contradiction by the Court which results from distinguishing source gathering from actual legislative acts when determining the applicability of legislative immunity.[59] The contradiction is the failure of the Court to apply legislative immunity to source gathering[60] in light of its previous statement that the privilege extends to matters beyond pure speech or debate ". . . when necessary to prevent indirect impairment of such deliberations."[61] If the majority intended to use "indirect impairment"[62] as a standard by which the immunity would be applied, then source gathering would have to be included within the purview of the clause; other-

53. *Id.* at 632. Mr. Justice Stewart took the view that it is not entirely clear that the executive's interest in the administration of justice should always override the public interest in having an informed Congress. *Id.* His primary reason for dissenting was that the conclusion reached by the majority was summarily decided and resulted in an inflexible solution to the question of legislative immunity. *Id.* at 633.

54. 408 U.S. 606, 648 (1972) (Brennan, J., dissenting). Mr. Justice Douglas and Mr. Justice Marshall joined in his dissenting opinion.

55. *Id.*

56. *Id.* at 662.

57. *Id.* Mr. Justice Brennan cited United States v. Johnson, 383 U.S. 169 (1966), for authority. Although he did not refer to any specific passages in the *Johnson* opinion, support for his contention can be found in statements by the *Johnson* Court that intensive judicial inquiry into the motives, manner of preparation and ingredients of the speech given by the defendant violates the express language of the speech or debate clause and the policies which underlie it. 383 U.S. at 175-77.

58. 408 U.S. at 663. Mr. Justice Brennan viewed source gathering as conduct which should always be protected by the speech or debate clause.

59. *See* 408 U.S. at 628-29.

60. *Id.*

61. *Id.* at 625.

62. *Id.* The Court, quoting from United States v. Doe, 455 F.2d 753 (1st Cir. 1972), seemed to indicate that this would be the method employed to determine availability of legislative immunity for matters other than pure speech or debate. 408 U.S. at 625.

wise, a legislator would be hampered by the constant threat of executive or judicial intervention.[63]

However, the Court's conclusion can be partially reconciled with previous cases which held that certain conduct, such as implementation of legislative acts[64] and information gathering,[65] was unprotected activity.[66] The majority reasoned that failure to grant the privilege in these previous cases ". . . may have to some extent frustrated a planned or completed legislative act, [but] . . . [n]o threat to legislative independence was posed . . . ."[67] The instant case differs from the previous decisions because the Court, here, did not rely on any particular facts for determining the availability of immunity.[68] Consequently, it appears that under no circumstances will protection be afforded to the source gathering process.[69]

Contrasting the history of the clause with the Court's conclusion seems to indicate a departure from former interpretations[70] to a narrower construction.[71] This change is accentuated when one considers previous statements by the Court that ". . . the privilege will be read broadly to effectuate its purpose, . . ."[72] and that ". . . the privilege was . . . born primarily of a desire . . . to prevent intimidation by the executive and accountability before a possibly hostile judiciary."[73] Similarly, in *Kilbourn v. Thompson*,[74] the Court, while speaking about the concept of legislative immunity,[75] quoted with approval from *Coffin v. Coffin*:[76]

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63. *See* 408 U.S. at 660, 663.
64. Powell v. McCormack, 395 U.S. 486 (1969); Kilbourn v. Thompson, 103 U.S. 168 (1881); *see* note 33 *supra*.
65. Dombrowski v. Eastland, 387 U.S. 82 (1967); *see* note 33 *supra*.
66. 408 U.S. at 620.
67. *Id.* at 621.
68. *See* 408 U.S. at 622, 628.
69. Mr. Justice Stewart interpreted the Court's opinion as holding that the executive may always compel a legislator to testify before a grand jury about his sources of information. Consequently, he dissented because this conclusion was too rigid. 408 U.S. at 633.
70. *See Id.* at 622. *See also* United States v. Johnson, 383 U.S. 169 (1966). One commentator has suggested that the speech or debate clause should encompass all the representative functions which a modern congressman performs; and, although speech is classically the basic element of the legislative process, it may be less significant than a congressman's efforts to obtain or provide information to press for a change in policy. Note, *The Bribed Congressman's Immunity from Prosecution*, 75 YALE L.J. 335, 346 (1965).
71. 408 U.S. at 622.
72. 383 U.S. at 180.
73. *Id.* at 180-81.
74. 103 U.S. 168 (1881).
75. *Id.* at 201-04.
76. 4 Mass. 9 (1808).

> These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the right of the People . . . . [T]he article ought not to be construed strictly, but liberally, that the full design of it may be answered.[77]

Examination of the majority opinion also reveals language in support of a broader interpretation[78] which is consistent with the history of the clause. Nevertheless, this interpretation is not reflected in the suggested modification of the protective order by the Court.[79]

Although the Court recognized that the privilege of legislative immunity should extend to congressional aides, its failure to include the information gathering process, by either the Member or his aides, threatens the responsible functioning of Congress and emasculates the purpose of the clause. Thus, a legislator now has to choose between the possibility of executive or judicial intervention, or adjust his conduct to conform to the holding of the Court. Viewed from the effect on all the members of Congress, rather than its justification in the instant case, the Court has reached an unfavorable solution when compared with other possible alternatives.[80] Had the Court confined its conclusion to the Senator's conduct,[81] notice would have been served to other congressmen that the speech or debate clause cannot be a complete shield against judicial scrutiny, yet the essence of the clause would have been preserved.

If one considers the case-by-case approach suggested by Mr. Justice Stewart,[82] a more favorable solution could have been obtained. Such an approach might not provide the best result over a short period of time; nevertheless, the use of judicial discretion to evolve a proper construction of the scope of the privilege, would prove to be more than adequate in the long run. A cautious approach combined with time and

77. 103 U.S. at 201-04; *see* Cella, *supra* note 18 (a thorough analysis of *Coffin*).

78. In its opinion the Court stated:

> The Speech or Debate Clause was designed to assure a co-equal branch of the government wide freedom of speech, debate, and deliberation without intimidation or threats from the Executive Branch.

408 U.S. at 616. Similarly, the Court stated:

> Rather than giving the Clause a cramped construction, the Court has sought to implement its fundamental purpose of freeing the legislator from executive and judicial oversight that realistically threaten to control his conduct as a legislator.

Id. at 618; *see id.* at 624.

79. *Id.* at 628-29.

80. *See The Supreme Court, 1971 Term*, 86 HARV. L. REV. 189, 198-201 (1972).

81. The Court could have reached its conclusion in the same manner as it had done in the previous cases.

82. 408 U.S. at 629.

circumstances would yield a result which is consonant with the purpose of the clause.[83]

Until this judicial status can be reached, the combination of a case-by-case determination[84] and the power of the House to take action against its members[85] would act as a deterrent against abuse of the privilege. In this way independence of the legislature is insured, and the Members can effectively perform their constitutional duty.

Louis Leo Brunetti

FEDERAL COURTS—JURISDICTION UNDER 28 U.S.C., SECTION 1343(3)—The Supreme Court of the United States has held that for purposes of federal jurisdiction arising under 42 U.S.C., section 1983, and its jurisdictional correlate 28 U.S.C., section 1343(3), there is no difference in achieving the right to redress deprivation pursuant to section 1343(3), whether the right asserted is personal, or proprietary.

Lynch v. Household Finance Corp., 405 U.S. 538 (1972).

Mrs. Lynch directed her employer to deposit ten dollars of her weekly pay in a credit union savings account in 1968. Shortly thereafter, Household Finance brought an action in a Connecticut state court, alleging non-payment of a promissory note in the amount of five hundred twenty-five dollars. Prior to Mrs. Lynch's being served with process, Household Finance garnished the savings account set up by her employer.[1] Mrs. Lynch then proceeded to file a class action in federal district court against both the sheriffs who levied on the savings account, and Household Finance which invoked the prejudgment garnishment procedure.[2] In that action, the plaintiff alleged violation of due process and equal

83. *See* Cella, *supra* note 18.

84. Mr. Justice Stewart stated that this type of determination would balance the need for an informed public with the proper administration of justice. 408 U.S. at 632.

85. U.S. CONST. art. I, § 5.

1. Household Finance Corp. garnished the savings account pursuant to CONN. GEN. STAT. REV. § 52-329 (1961), which authorizes summary prejudgment attachment, and garnishment. Under the statute, this action could be taken at the request of attorneys for the creditor.

2. Lynch v. Household Finance Corp., 318 F. Supp. 1111 (D. Conn. 1970). In this action, a class action was used to represent those owners of savings and checking accounts who sought declaratory and injunctive relief after having had their accounts garnished under the Connecticut procedure.