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State Judicial Misconduct: An Improper Target for Federal Injunctive Relief

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involved with Mary Carter agreements;[42] the Florida Supreme Court did not, thus deferring an issue which may cause a great degree of uncertainty in the future.

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STATE JUDICIAL MISCONDUCT: AN IMPROPER TARGET FOR FEDERAL INJUNCTIVE RELIEF

Plaintiffs instituted a federal civil rights action[1] against a state attorney, his investigator, a local police commissioner, a county magistrate and a judge. In addition to damages, they sought to enjoin the judges from alleged discriminatory practices in imposing bail, sentences and court costs[2] on plaintiffs and other citizens of Cairo, Illinois, who were or would be arrested while engaging in active protests against private and public racial discrimination in the city.[3] The district court dismissed the complaint on jurisdictional and judicial immunity grounds. The Court of Appeals for the Seventh Circuit reversed.[4] Upon writ of certiorari, the Supreme Court *held*, reversed as to defendant judges: (1) the case or controversy requirement is not met in a federal injunctive suit unless the named plaintiffs, not merely members of their class, suffer continuing adverse effects of the actions to be enjoined, and (2) even assuming a case or controversy existed, principles of federal-state comity preclude federal injunctive relief against state judicial misconduct. *O'Shea v. Littleton*, 94 S. Ct. 669 (1974).[5]

By a prior decision,[6] the Court had held that state judges were

42. *Id.* at 409-10, 488 P.2d at 351-52.

1. 42 U.S.C. §§ 1981-83 and 1951 (1970). Jurisdiction was invoked under 28 U.S.C. §§ 1331 and 1343 (1970).

2. The court costs were imposed to pay for jury trials. Littleton v. Berbling, 468 F.2d 389, 393 n.1 (7th Cir. 1972).

3. During the late 1960's and into the 1970's the [Civil Rights] Movement contended in the streets of Cairo with white forces seeking to maintain a racial status quo that blacks rejected. . . .

[B]lacks marched, boycotted and fought pitched battles with white vigilantes, and the city experienced a long night of shooting, burning and disorder unmatched in its duration anywhere else in the country. That night still has not ended.

P. GOOD, CAIRO, ILLINOIS: RACISM AT FLOODTIDE 2 (U.S. Commission on Civil Rights 1973). Mr. Good reported that as of March, 1972, no black had ever served on the county housing authority or welfare commission, or on the Cairo public utility commission or library board, that in Cairo's history only one black had been a fireman and another a city commissioner, that blacks comprised 30% of the county and 40% of the city population, and that the median county income was $6400 for white families and $2800 for black. *Id.* at 5-6.

4. Littleton v. Berbling, 468 F.2d 389 (7th Cir. 1972).

5. The case against the other defendants was remanded to determine the issue of mootness. Spomer v. Littleton, 94 S. Ct. 685 (1974).

6. Pierson v. Ray, 386 U.S. 547 (1967).

immune from liability for damages in suits brought under United States Code, title 42, section 1983 (1970). That decision left unresolved the question of whether judicial immunity barred an action for a section 1983 injunction.[7] In *O'Shea*, such relief was denied on grounds not of judicial immunity, but of federal-state comity.[8] The *O'Shea* decision is thus a significant application of the principles of federal nonintervention expressed in *Younger v. Harris*[9] and its companion cases.[10] A review of prior comity cases indicates that *O'Shea* has narrowed further the permissible grounds for federal intervention.[11]

Dombrowski v. Pfister[12] was a section 1983 action to enjoin state officials from threatened bad faith prosecution of the plaintiff under a statute invalid on its face. In granting the injunction the Court distinguished prior cases on the ground that the injury alleged by Dombrowski—infringement on the exercise of first amendment rights by harassment under an invalid law—could not be redressed in the threatened state proceeding.[13]

Dombrowski was broadly construed as permitting federal equitable intervention into pending or threatened state proceedings upon the allegation that the exercise of first amendment rights was being "chilled" by the existence of invalid laws.[14] This broad reading of *Dombrowski* was rejected in *Cameron v. Johnson*.[15] In that case the Court held that "a

7. It was generally thought that such relief was available. *See, e.g.*, Pugh v. Rainwater, 483 F.2d 778, 782 (5th Cir. 1973), *cert. granted sub nom.*, Gerstein v. Pugh, 94 S. Ct. 567 (1974); United States v. McLeod, 385 F.2d 734, 738 n.3 (5th Cir. 1967) ("[*Pierson* did] not mean that [state judges] may not be enjoined from pursuing a course of unlawful conduct."); Green v. City of Tampa, 335 F. Supp. 293 (M.D. Fla. 1971); Bramlett v. Peterson, 307 F. Supp. 1311 (M.D. Fla. 1969); United States v. Clark, 249 F. Supp. 720 (S.D. Ala. 1965).

8. Mitchum v. Foster, 407 U.S. 225 (1972) held that section 1983 actions are exempted from the bar against federal injunctions of state court proceedings imposed by the Anti-Injunction Act, 28 U.S.C. § 2283 (1970). *Mitchum* cautioned that federal-state comity might nevertheless prohibit such relief. 407 U.S. at 243-44. This case is noted at 27 U. MIAMI L. REV. 208 (1972).

9. 401 U.S. 37 (1971).

10. Boyle v. Landry, 407 U.S. 77 (1971); Samuels v. Mackell, 401 U.S. 66 (1971); Perez v. Ledesma, 401 U.S. 82 (1971); Brynes v. Karalexis, 401 U.S. 216 (1971). Hereinafter *Younger* will be used to refer to all these cases unless the context otherwise indicates.

11. *See generally* C. WRIGHT, FEDERAL COURTS § 52 (2d ed. 1970 and Supp. 1972) [hereinafter cited as WRIGHT]; Maraist, *Federal Injunctive Relief Against State Court Proceedings: The Significance of Dombrowski*, 48 TEXAS L. REV. 535 (1970) [hereinafter cited as Maraist]; Note, 25 U. MIAMI L. REV. 506 (1971).

12. 380 U.S. 479 (1965). The defendants were a state governor, legislator and police officers.

> 13. [T]he allegations in this complaint depict a situation in which defense of the state's criminal prosecution will not assure adequate vindication of constitutional rights. They suggest that a substantial loss of or impairment of freedoms of expression will occur if appellants must await the state court's disposition and adverse determination. These allegations, if true, clearly show irreparable injury.

Id. at 485-86.

14. *See*, WRIGHT, *supra* note 11; Maraist, *supra* note 11, at 510; Note, 25 U. MIAMI L. REV. 506, 510 (1971).

15. 390 U.S. 611 (1968). The defendants were a state governor and state law enforcement officials.

showing of 'special circumstances' beyond the injury incidental to every proceeding brought lawfully and in good faith is requisite to a finding of irreparable injury sufficient to justify the extraordinary remedy of an injunction."[16] The Court thus hinged federal intervention primarily on a showing of bad faith enforcement by state officials of a statute invalid on its face or as applied.[17] In accord with *Dombrowski*,[18] it further implied that a more general requirement must be met of which proven bad faith was only one expression: the federal plaintiff could not adequately vindicate his federal rights in the *single* state prosecution facing him.[19]

In *Younger v. Harris*[20] the federal plaintiff sought to enjoin his pending state prosecution under an alleged facially invalid law. The Court did not accept Harris' contention that he faced irreparable injury of a sufficiently great and immediate nature as to necessitate equitable relief. As in *Cameron*, the *Younger* Court emphasized the fatal absence of a charge of bad faith[21] and, after reviewing prior decisions to determine the requisite "irreparable injury," noted the significance given to the possibility of a federal plaintiff's adequately protecting his federal rights in the pending or future state prosecution:

> Certain types of injury, in particular, the cost, anxiety, and inconvenience of having to defend against a *single* criminal prosecution, could not by themselves be considered "irreparable" in the special legal sense of that term. Instead, the threat to the plaintiff's federally protected rights must be one that cannot be eliminated by his defense against a *single* criminal prosecution.[22]

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16. *Id.* at 618.

17. "[W]e viewed *Dombrowski* to be a case presenting a situation of the 'impropriety of [state officials] invoking the statute in bad faith to impose continuing harassment in order to discourage appellants' activities. . . .'" *Id.* at 619, *quoting* Dombrowski v. Pfister, 380 U.S. 479, 490 (1965). The Court affirmed that the claim of bad faith was not supported in the record and denied relief. 390 U.S. at 620. The Court indicated *Dombrowski's* rationale would apply to bad faith enforcement of valid as well as facially invalid laws. *Id.*

18. See note 13 *supra* and accompanying text.

19. [T]he record does not establish the bad faith charged. This is therefore not a case in which ". . . a federal court of equity by withdrawing the determination of guilt from the state courts could rightly afford [appellants] any protection which they could not secure by prompt trial and appeal pursued to this Court."

390 U.S. at 620, *citing* Douglas v. City of Jeanette, 319 U.S. 157, 164 (1942).

20. 401 U.S. 37 (1971). The defendant was a state district attorney.

21. It is sufficient for purposes of the present case to hold, as we do, that the possible unconstitutionality of a statute "on its face" does not in itself justify an injunction against good-faith attempts to enforce it, and that appellee Harris has failed to make any showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief.

Id. at 54. The only example of "other unusual circumstances" given in which bad faith might not be a requisite was a statute "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph and in whatever manner and against whomever an effort might be made to apply it." *Id.* at 53-54, *quoting* Watson v. Buck, 313 U.S. 387, 402 (1941).

22. *Id.* at 46 (emphasis added). In a case relied on in the *Younger* decision, the Court stated:

The accused should first set up and rely upon his defenses in the state courts, even

The *Dombrowski-Cameron-Younger* formula for federal injunctive relief thus appeared to require (1) allegations of "irreparable injury"[23] to the named plaintiffs[24] resulting, or threatening to result, from (2) bad faith enforcement of a state law invalid on its face[25] or as applied,[26] or (3) "any other unusual circumstance" such as a statute which was "flagrantly and patently" unconstitutional,[27] or generally, from (4) the fact that the federal rights allegedly violated could not be vindicated in a defense of a single state prosecution.[28]

The restrictive aspect of this formula found expression in subsequent cases.[29] State pre-judgment garnishment and replevin statutes were declared unconstitutional and their enforcement enjoined in *Lynch v. Household Finance Corp.*[30] and *Fuentes v. Shevin*,[31] respectively. Justice White, who wrote the majority opinion in *O'Shea*, dissented in both cases, joined by Chief Justice Burger and Justice Blackmun.[32] He would have found lack of federal jurisdiction based on *Younger* so as to allow the state courts to pass first on the federal claims, despite the fact that the federal plaintiffs were not seeking to stay or enjoin the proceedings in which the underlying debts were to be adjudicated.[33]

In *Preiser v. Rodriguez*[34] the Court held that comity principles as expressed in *Younger* necessitated invoking the federal habeas corpus requirement of prior exhaustion of state remedies[35] in a section 1983 challenge by state inmates against prison procedures which allegedly resulted in illegal denial of accrued good conduct time.[36] The Court rea-

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though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection.

Fenner v. Boykin, 271 U.S. 240, 243-44 (1926), *quoted in* 401 U.S. at 45.

23. Younger v. Harris, 401 U.S. 37, 53 (1971).

24. Boyle v. Landry, 401 U.S. 77 (1971).

25. Dombrowski v. Pfister, 380 U.S. 479 (1965).

26. Cameron v. Johnson, 390 U.S. 611, 620 (1968).

27. Younger v. Harris, 401 U.S. 37, 54 (1971).

28. Younger v. Harris, 401 U.S. 37, 46 (1971); Cameron v. Johnson, 390 U.S. 611, 620 (1968); Dombrowski v. Pfister, 380 U.S. 479, 485-86 (1965). "Harris' constitutional contentions may be adequately adjudicated in the state criminal proceeding and federal intervention at his instance was *therefore* improper." 401 U.S. at 56-57 (Brennan, J., concurring) (emphasis added).

29. See note 8 *supra* for a discussion of Mitchum v. Foster, 407 U.S. 225 (1972). In a post-*O'Shea* decision the Court held that *Younger* did not prohibit *declaratory* relief against state prosecution under a facially invalid law. Steffel v. Thompson, 94 S. Ct. 1209 (1974); *cf.* Samuels v. Mackell, 401 U.S. 77 (1971).

30. 405 U.S. 538 (1972).

31. 407 U.S. 67 (1972).

32. Justices Powell and Rehnquist, who joined in the *O'Shea* decision, did not participate in these cases.

33. Fuentes v. Shevin, 407 U.S. 67, 98 (1972); Lynch v. Household Fin. Corp., 405 U.S. 538, 560-61 (1972).

34. 93 S. Ct. 1827 (1973). The defendants were state prison officials.

35. 28 U.S.C. § 2254 (1970).

36. Successful federal suits would have brought about the shortening or termination of their sentences. 93 S. Ct. at 1832.

soned that these principles underlie the "prior exhaustion" requirement:

> [Federal-state comity] was defined in Younger v. Harris . . . as "a proper respect for state functions," and it has as much relevance in areas of particular state administrative concern as it does where state judicial action is being attacked.[37]

The dissent argued against shielding state administrative misconduct from direct federal review by use of comity principles which it believed were designed to protect only state judicial proceedings.[38]

Significantly, the *Preiser* majority[39] cited *Younger* to meet the central argument that the "prior exhaustion" requirement was triggered only in challenges to state court action.[40] *Younger's* restrictive side was thus given full weight and perhaps was extended beyond the case's intended holding.[41] Not discussed were the factors of bad faith and unavailability of vindication of federal rights in a single state proceeding which *Younger* had apparently left untouched as circumstances permitting federal equitable intervention.[42] The record before the Court contained evidence of these factors sufficient to warrant at least a discussion of why the *Dombrowski-Cameron-Younger* rationale did not in fact implicate federal injunctive relief.[43]

The plaintiffs in *O'Shea* sought to enjoin state judges[44] from alleged practices of racial discrimination. The result adverse to their claim was, as Justice Douglas expressed it,[45] a *tour de force* against such an action.

37. *Id.* at 1837.

38. "This is not a case . . . where federal intervention would interrupt a state proceeding or jeopardize the orderly administration of state judicial business." *Id.* at 1852 (Brennan, J., dissenting).

39. Justice Stewart's opinion was joined by Chief Justice Burger, and Justices White, Blackmun, Powell and Rehnquist. Justice Brennan's dissent was joined by Justices Douglas and Marshall.

40. See notes 37 and 38 *supra* and accompanying text.

41 "[*Younger*] does not in any sense demand, or even counsel, today's decision." 93 S. Ct. at 1852 (dissent).

42. See notes 23-28 *supra* and accompanying text.

43. The findings of the district courts for each of the *Preiser* plaintiffs strongly imply that they were subjected to bad faith and harassment by state prison officials. Kartzoff v. McGinnis, 441 F.2d 558, 559 (2d Cir. 1971); Kritsky v. McGinnis, 313 F. Supp. 1247, 1250-51 (N.D.N.Y. 1970); Rodriguez v. McGinnis, 307 F. Supp. 627, 630-32 (N.D.N.Y. 1969). Allegations of bad faith harassment were contained in each plaintiff's complaint. Preiser v. Rodriguez, 93 S. Ct. 1827, 1842 n.2 (1973) (Brennan, J., dissenting). In the cases of *Kritsky* and *Rodriguez*, the district court found that the prison hearing reports which were adverse to the plaintiffs were not properly processed to enable higher administrative review. Kritsky v. McGinnis, 313 F. Supp. 1247, 1250-51 (N.D.N.Y. 1970); Rodriguez v. McGinnis, 307 F. Supp. 627, 630-31 (N.D.N.Y. 1969).

44. Other state defendants were also joined. See note 5 *supra* and accompanying text. Neither the decision of the court of appeals nor that of the Supreme Court clarifies whether any of the named plaintiffs or members of their class were defendants in state criminal proceedings pending at the time the federal suit was filed. The quote in the text accompanying note 50 *infra* expresses this ambiguity. The Court's broad language, however, clearly indicates that whether or not any state suits were pending, the relief sought may not be granted. See the text accompanying notes 55-58 *infra*. *Younger*, of course, involved a pending state prosecution. See text accompanying note 20 *supra*.

45. 94 S. Ct. at 681 (Douglas, J., dissenting).

The complaint required dismissal, the Court reasoned in part I of its decision, because it did not state a present case or controversy "regarding injunctive relief."[46] The Court found two infirmities. First, specific charges of illegal conduct by the judges against the named plaintiffs were lacking.[47] Second, the kinds of wrongs cited—practices of discriminatory imposition of bail, sentences and court costs—did not result in the "continuing, present adverse effects"[48] which may be redressed by an injunction because *Preiser's* prior exhaustion requirement[49] would bar any immediate federal review of state custody under an allegedly illegal sentence. In addition, "if any plaintiffs were then on trial or awaiting trial in state proceedings, the complaint would be seeking injunctive relief that a federal court should not provide."[50] Finally, the conjectural nature of the charge that plaintiffs would be subjected to future deprivations by the judges robbed the complaint of concreteness.[51] Since no statutes or their enforcement were attacked, the Court would not presume that in the future the plaintiffs would be arrested and exposed to the judges' alleged misconduct.[52]

In part II the Court considered the complaint as satisfying the case or controversy requirement so as to reach its merits.[53] First, it held that principles of federal-state comity precluded the relief sought. The court of appeals had determined that these principles applied narrowly to interference with "prosecutions to be commenced under challenged statutes . . . ."[54] It had also suggested that the injunction could take the form of a "periodic reporting system" and as such would not interfere with state prosecutions.[55] The Supreme Court, however, was not moved to distinguish *Younger* by the fact that the *O'Shea* plaintiffs did not seek to overturn any state law or stay any pending state proceeding.

> An injunction of the type contemplated by [the plaintiffs] and the Court of Appeals would disrupt the normal course of pro-

46. *Id.* at 676.

47. *Id.* at 675.

48. "Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief, however, if unaccompanied by any continuing, present adverse effects." *Id.* at 676.

49. See note 34 *supra* and accompanying text.

50. 94 S. Ct. at 676, *citing* Younger v. Harris, 401 U.S. 37 (1971). Presumably this comment was directed at the charges of improper imposition of bail and court costs as well as sentencing.

51. 94 S. Ct. at 676-77, 679.

52. *Id.* at 676-77. Justice Douglas, dissenting, cited allegations in the amended complaint that the defendant police commissioner had unjustifiedly brought charges against the plaintiffs to harass them and prevent their protest activities. *Id.* at 682. He concluded,

> [t]hese allegations support the likelihood that the named plaintiffs as well as members of their class will be arrested in the future and therefore will be brought before O'Shea and Spomer [the judges] and be subjected to the alleged discriminatory practices in the administration of Justice.

Id.

53. *Id.* at 677.

54. *Id.* at 678.

55. *Id.* at 679.

> ceedings in the state courts via resort to the federal suit for determination of the claim *ab initio*, just as would the request for injunctive relief from an ongoing state prosecution against the federal plaintiff which was found to be unwarranted in *Younger*. . . . [I]t would require for its enforcement the continuous supervision by the federal court over the conduct of the [defendants] in the course of future criminal trial proceedings involving any of the members of [the plaintiffs'] broadly-defined class.[56]

The Court stressed that "[w]hat [the plaintiffs] seek is an injunction aimed at controlling or preventing the occurrence of specific events that might take place in the course of *future* state criminal trials,"[57] and found such relief to constitute "nothing less than an ongoing audit of state criminal proceedings which would indirectly accomplish the kind of interference that *Younger v. Harris* and related cases sought to prevent."[58]

Second, the Court found lacking the requisites of equitable relief, *i.e.*, the likelihood of substantial and immediate irreparable injury and the inadequacy of legal remedies.[59] It referred to its prior determination that the alleged threatened injuries were conjectural in nature[60] and noted that the plaintiffs could have sought redress in a number of ways such as by substitution of judges, change of venue, direct appeal, post conviction collateral review, federal habeas corpus, state disciplinary proceedings, and federal criminal prosecution of the judges.[61]

As in *Preiser*, the *O'Shea* decision seems to have ignored the factors in the *Dombrowski-Cameron-Younger* rationale[62] which would implicate federal injunctive intervention. The bad faith of state officials, playing so significant a role in *Younger* and earlier decisions, was not discussed by the *O'Shea* majority. The complaint, considered as stating a case or controversy, described harassment and bad faith by state judges, officials and police of a quite serious nature and degree.[63] By dismissing it pri-

56. *Id.*

57. *Id.* at 678 (emphasis added).

58. *Id.*

59. *Id.* at 679.

60. *Id.* See Justice Douglas' criticism of this finding discussed in note 52 *supra*.

61. *Id.* at 679-80. The dissent argued that the adverse effects of the alleged discrimination might not be remedied at trial or on appeal, and that state law made it difficult, if not impossible, to challenge the discretion of the trial judge in sentencing. *Id.* at 683. Justice Douglas further noted that the plaintiffs primarily charged discriminatory practices and not individual instances of harsh treatment. "A class suit where evidence could be developed showing a pattern of discriminatory bail and sentencing decisions by the [judges] would be the one appropriate vehicle in which these claims could be developed." *Id.* at 683-84.

62. See notes 23-28, 42 and 43 *supra* and accompanying text.

63. What we have alleged here is not only wrongs done to named plaintiffs but a recurring pattern of wrongs which establishes, if proved, that the legal regime under control of the whites in Cairo, Illinois, is used over and over again to keep the Blacks from exercising First Amendment rights, to discriminate against them, to keep from the Blacks the protection of the law in their lawful activities, to weight the scales of justice repeatedly on the side of white prejudices and against

marily on the basis of *Younger*, the Court went beyond the restrictions imposed by that case on federal intervention. The result is that, whereas bad faith enforcement of an unconstitutional statute by state police and other officials is an appropriate target for federal injunctive relief, bad faith misconduct by a state judge perpetrated against an accused before him is not. The distinction was not expressly dealt with in *O'Shea*, and it does not appear sufficient to justify the broad shield the Court has erected against federal injunctive relief from state judicial misconduct,[64] particularly since such an action may be the most effective means to develop proof of such charges.[65]

The more general factor—that the federal plaintiff be unable to vindicate federal rights in the pending or threatened state prosecution—appears to have fared no better. Certainly the *Dombrowski* plaintiffs could have utilized some of the alternative remedies proposed by the *O'Shea* majority, such as disciplinary proceedings and federal criminal prosecution, yet they were not required to do so. Indeed, the *O'Shea* majority's admonition that federal plaintiffs seek vindication of their federal rights outside the state prosecution facing them had not been put forth by any prior decision.[66] The argument by the dissent and the court of appeals that proof of the charges against the judges would have been improbable under state law,[67] which was not met by the majority, further undercuts the suggestion that a single state defense could vindicate the plaintiffs' federal rights and that adequate alternative remedies existed at law.

The *O'Shea* decision apparently would permit a federal court to enjoin state judges under the following conditions: First, the federal plaintiffs must allege specific instances of illegal actions against them by the judges; second, the injuries arising therefrom must be continuing and irreparable; and third, their remedies at law must be inadequate.

Prior to *O'Shea*, lower federal courts enjoined state judges from violating state defendants' rights to counsel[68] and to a preliminary hear-

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Black protests, fears, and suffering. This is a more pervasive scheme for suppression of Blacks and their civil rights than I have ever seen.

93 S. Ct. at 683 (Douglas, J., dissenting).

64. [Where state law enforcement is in bad faith,] the reasons of policy for deferring to state adjudication are outweighed by the injury flowing from the very bringing of the state proceedings, by the perversion of the very process that is supposed to provide vindication, and by the need for speedy and effective action to protect federal rights.

Younger v. Harris, 401 U.S. 37, 56 (1971) (Stewart, J., concurring).

65. See note 61 *supra*.

66. *See, e.g.*, the following recent statement by the Court of Appeals for the Fifth Circuit: "*Younger* has never been applied by our circuit to force a federal court to relinquish jurisdiction over a federal claim which could not be adjudicated in a *single* pending or future state proceeding . . . ." Pugh v. Rainwater, 483 F.2d 778, 782 (5th Cir. 1973) (emphasis in original).

67. See note 61 *supra*.

68. *See, e.g.*, Green v. City of Tampa, 335 F. Supp. 293 (M.D. Fla. 1971); Bramlett v. Peterson, 307 F. Supp. 1311 (M.D. Fla. 1969). Right to counsel violations apparently

ing.[69] Objections raised in *O'Shea* against injunctive relief would seem applicable to these cases.[70] An avenue into federal court, however, might be found by maintaining that the injuries arising from denial of counsel or pre-trial liberty are more clearly "irreparable" than those alleged in *O'Shea*.[71] An additional distinguishing fact in these cases was that the applicable law was unclear.[72] Nevertheless, the possibility of federally enjoining state judicial misconduct, which may border on criminal culpability, appears foreclosed.

WILLIAM BERGER

A STRICT INTERPRETATION OF THE UCC EXTENDS FLORIDA'S POLICY OF DEBTOR PROTECTION

Irving Turk, president of Bob King, Inc., acted as co-maker in executing a $35,000 note along with a security agreement to plaintiff-bank as consideration for floor-plan financing of automobiles which the company was selling. Before Turk ceased to be active in the corporation, he joined Bob King, Inc., in substituting a note of $20,000 for the original one. The bank continued to advance monies until an indebtedness of $36,336 was reached. At that point the bank notified Bob King, Inc., took possession of and then sold the pledged automobiles without notifying Turk. Since only $17,881.52 of the alleged outstanding indebtedness was realized, the bank sued Turk for the deficiency plus interest. A jury returned a verdict of $7,490 in favor of the bank. On appeal, the District Court of Appeal, Second District, *held*, reversed: If the secured creditor repossesses and sells the pledged goods, without notifying the debtor pursuant to Florida Statutes section 679.504(3) (1971),[1] the creditor forfeits his right to a

continue in Florida municipal courts. *See*, Wisotsky, *The Status of Municipal Courts in Florida*, 48 FLA. B.J. 290 (1974).

69. Pugh v. Rainwater, 483 F.2d 778 (5th Cir. 1973).

70. Injunctions against the violations alleged in these cases would also seem to require the daily "monitoring" of and potential interference with state court proceedings by contempt hearings in federal court which were rejected in *O'Shea*. In addition, remedies other than injunctive relief, such as federal habeas corpus, would appear available to the federal plaintiff.

71. The Court of Appeals for the Fifth Circuit, in Pugh v. Rainwater, 483 F.2d 778, 783 (5th Cir. 1973) expressly declined to rule whether loss of liberty through denial of the right to a preliminary hearing fell within the "irreparable injury" exception to *Younger*.

72. The right to counsel cases cited in note 68 *supra* were prior to, and raised issues which were finally disposed of, in Argersinger v. Hamlin, 401 U.S. 908 (1972). *Pugh*, a case of first impression, is now before the Court. 94 S. Ct. 567 (1974). The impermissible conduct in these cases was "valid" under prior law and was, thus, more likely to recur if injunctive relief was denied or to cease once a definitive statement of federal rights was rendered, than the criminal conduct alleged in *O'Shea*.

1. The statute provides in part:

Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time