Louisiana Law Review

Volume 29 | Number 2
The Work of the Louisiana Appellate Courts for the 1967-1968 Term: A Symposium
February 1969

Procedure: Criminal Procedure

Dale E. Bennett

not, as against a third person, invalidate the sale for technical procedural defects which, by timely proper objection, could have averted the sale. On the other hand, as *League Central* holds, the debtor's failure at the time to take steps to prevent the loss of property he may have been unable to pay for anyway, does not bar him from a defense based upon the impropriety of the sale when, for the first time, the quite different question is presented of his personal liability for a money judgment beyond the value of the property. The *League Central Credit Union* decision thus provides a rule which protects debtors against abuse through executory process, without at the same time endangering the stability of titles gained by third persons through judicial sales resulting from executory proceedings.

CRIMINAL PROCEDURE

*Dale E. Bennett**

PRE-TRIAL DISCOVERY

The broad pre-trial discovery procedures of the Federal Rules[1] have not been adopted by most states. Stressing the fact that full pre-trial discovery was considered and rejected when the 1966 Louisiana Code of Criminal Procedure was drafted, the Louisiana Supreme Court in *State v. Hunter*[2] reaffirmed the prior Louisiana rule that a defendant is entitled to pre-trial inspection of his written confession, but refused to broaden the defendant's right to a full discovery of evidence in possession of the district attorney. Two 1967-68 decisions further illustrate the rule that the defendant does not have a right to inspect the state's evidence in advance of trial. *State v. Cardinale*[3] reiterated the "firmly established" rule that a defendant is not entitled to a pre-trial inspection of written confessions of co-defendants, written statements of witnesses, or police reports in the possession of the district attorney.[4]

In *State v. Fox*[5] the Supreme Court applied a "well-settled rule" that the state is not required to furnish the defendant with a list of its witnesses. Denial of general discovery rights to defense counsel is not an arbitrary rule. If discovery were

* Professor of Law, Louisiana State University.

1. Fed. R. Crim. P. 16.

2. 250 La. 295, 195 So.2d 273 (1967), discussed in *The Work of the Louisiana Appellate Courts for the 1966-1967 Term—Criminal Procedure*, 28 LA. L. REV. 427 (1968).

3. 251 La. 827, 206 So. 2d 510 (1968).

4. Citing numerous cases, *id.* at 832, 206 So.2d at 512.

5. 251 La. 464, 205 So.2d 42 (1967).

granted it would be a one-way street, rather than a mutual right as in civil cases. It is generally felt that the criminal defendant's privilege against self-incrimination would preclude the state's corresponding right to demand information as to defenses or witnesses and their testimony.[6] A further danger of revealing the names and testimony of state witnesses would be the possibility of fabricated rebuttal testimony and that steps might be taken to bribe or intimidate the witnesses into refusing to testify or testifying falsely. After stating these considerations, the New Jersey Supreme Court aptly pointed out that "all these dangers are more inherent in criminal proceedings where the defendant has more at stake, often his life, than in civil proceedings."[7]

It is also well to note, as illustrated by the Supreme Court's decision in *In re Metropolitan Crime Comm'n*,[8] that the subpoena duces tecum[9] may not be used as a discovery device to compel the production of records over a long period of time which may or may not have a direct relevancy to the investigation at hand.

IRREGULAR JURY COMMISSION PROCEDURES

Article 419 of the Code of Criminal Procedure continues an important rule[10] which prohibits the setting aside of jury venires because of irregularities in their composition or in procedures of the jury commission "unless fraud has been practiced or some great wrong committed that would work irreparable injury to the defendant." This provision is based on a recognition of the fact that jury commissioners are laymen, untrained in the niceties of the law. As such they are prone to make mistakes, and will often, although acting in the utmost good faith, fail to follow the full letter of the law. In *State v. Marks*[11] there had been a possible departure from the requirement that "the jury commission shall select" the members of the general venire,[12] in that names of veniremen were furnished by members from their respective wards and then automatically approved by the commission. In upholding the procedure followed, Chief Justice Fournet, who wrote the Supreme Court's majority opinion, agreed with the trial judge that the general venire list "was the

6. Commonwealth v. Caplan, 411 Pa. 563, 192 A.2d 894 (1963).
7. State v. Tune, 13 N.J. 203, 98 A.2d 881 (1953).
8. 251 La. 518, 205 So.2d 384 (1967).
9. Authorized for criminal cases by LA. CODE CRIM. P. art. 732.
10. Former LA. R.S. 15:203 (1950).
11. 252 La. 277, 211 So.2d 261 (1968).
12. LA. CODE CRIM. P. art. 408.

result of their [the jury commission's] combined efforts and approved by them as a whole." The Supreme Court also endorsed the trial judge's finding that "it is evident that they have tried their best to select as fair and impartial jury panels as could possibly be had." Within the wise formula of Article 419, there was not a showing of fraud or great wrong resulting in irreparable injury.[13]

Dissenting Justice Barham, after outlining the procedures followed, argued that "the jury commissioners did not as a group or individually have any knowledge of the total makeup of the general venire." He stressed the idea that "the law requires common deliberation and concerted action by the jury commission in the selection of the general venire," and concluded that there had been such a great departure from the prescribed statutory jury commission procedures that there was "such a great wrong per se that this court would be irrational to burden the defendant with the onus of proving fraud or specific irreparable injury."[14] The case of *State v. Newhouse*,[15] relied upon by Justice Barham, is distinguishable. In *Newhouse* the "cut and dried" jury list had been prepared by a third person who was not a member of the commission and was under no official oath. In *Marks* the jury commission had made an honest effort to perform its function of preparing a jury list that would provide a fair cross-section of the community, and had followed a procedure designed to achieve that end. A common deliberation on each individual name would probably have been advisable, but there had been no such departure from the intended procedures as to justify a finding of fraud or great wrong.

CHANGE OF VENUE—NEW INDICTMENT

The change of venue provisions of the Louisiana Code of Criminal Procedure[16] are an implementation of the defendant's "due process" right to a fair trial, and are based on the idea that a defendant should not be proceeded against in a parish where there is such prejudice that a fair trial cannot be held. *State v. Alexander*[17] involved a problem of change of venue procedures which, despite its practical significance, was res nova in Louisiana. After a change of venue had been ordered and the murder trial transferred from St. Martin Parish (place of

13. 211 So.2d 261, 264 (La. 1968).
14. *Id.* at 271-272.
15. 29 La. Ann. 824 (1877).
16. LA. CODE CRIM. P. arts. 621-627; authorized by LA. CONST. art. I, § 9.
17. 252 La. 564, 211 So.2d 650 (1968).

the crime) to St. Mary Parish, the original indictment was quashed on grounds of racial discrimination in the selection of the St. Martin Parish grand jury which had returned the indictment. A St. Mary Parish grand jury then re-indicted the defendant for murder, and a principal issue on appeal was whether the grand jury of the transferee parish had authority to return the corrective indictment.

In writing the majority opinion for a divided court (4-3) which upheld the conviction, Justice Sanders stressed the idea that after a change of venue the offense was triable and all future procedures should be had in the parish to which the case was transferred. Concerning the authority of the St. Mary Parish grand jury, he stressed the grand jury's specific authority to inquire into all crimes "triable within the parish."[18] The complete authority of the transferee parish was shown by the special change of venue rule that when a case is ordered removed, "it shall be heard, tried and determined in the same manner as if the proceedings had originally been instituted therein."[19]

Dissenting Justice Barham took the position that this language should be literally construed to mean that only the hearing and trial should proceed as if the proceedings had originated in the second parish. It is submitted that the import and purpose of former R.S. 15:296, which was relied upon by Justice Sanders, was to make it clear that when a case is transferred all future proceedings are to be conducted in the transferee parish. This intent is stated even more clearly in corresponding Article 624 of the 1966 Code of Criminal Procedure which provides that the transferred case "shall be proceeded with in the same manner as if the proceedings had originally been instituted therein."

An additional practical reason for adopting the majority view that the new parish court should have complete control of further action in the case is that an indictment returned by a grand jury of the new parish will probably represent a fairer and more detached appraisal of the sufficiency of the charge against the defendant than another indictment returned by a grand jury of the parish where sentiment ran so high that a fair trial could not be had.[20]

18. Citing former LA. R.S. 15:209 (1950).
19. Citing *id.* 15:296.
20. Concurring Justice Hamlin suggests this when he states: "Reason dictates that if the trial judge is reversed and another indictment is returned in St. Martin Parish, another motion to quash will be filed on the ground that the indictment is null because it will have been found by a biased and prejudiced Grand Jury. If the motion is granted, is the accused to be set free?" 211 So.2d

Justice Sanders' majority opinion does not deal with the related question of whether the grand jury of the original parish could have re-indicted the defendant. It would appear that this question, when presented, might well be answered in the negative.

CONFESSIONS

The 1966 Code of Criminal Procedure adopted an entirely new approach to the former requirement of reference to confessions in the opening statement. Article 767 prohibits any reference to a confession or inculpatory statement in the district attorney's opening statement. From the defendant's standpoint, substantial damage has been done when the jury is told that the defendant made a confession or other inculpatory statement which later proves inadmissible in evidence. At the same time the defendant cannot properly prepare to meet the issue unless he is apprised of the state's intention to use the confession or inculpatory statement. Thus, Article 768 requires the state to advise the defense, in writing prior to the opening statement, of its intention to introduce the confession or inculpatory statement. Failure to give such notice renders the confession inadmissible in evidence.[21] The new Code procedures were designed to preclude possible prejudice to the defense, and also to avoid the troublesome problem as to just how detailed an opening statement reference to the confession should be.[22] This intended simple non-technical approach was understandingly implemented by the Louisiana Supreme Court in *State v. Palmer*[23] where timely notice had been given, but defense counsel contended that the state gave notice of an "inculpatory statement" but introduced a "confession." It was argued that the notice had failed to conform with the type of admission which was ultimately introduced in evidence. In rejecting this hyper-technical claim of variance, Justice Summers stated, "Although the quoted statement certainly could be considered as a confession, we do not feel that the lawmakers intended to cast upon the State the obligation of making a definitive analysis of the testimony it sought to introduce. What the article contemplates is that if the introduction is either an inculpatory statement or a confession, notice should be given."[24] It is the giving of notice that a self-incriminatory statement is

at 664. It may be possible to select a grand jury which can withstand constitutional attack, but the prejudicial atmosphere can be completely avoided by presenting the corrective true bill to a grand jury in the second parish.

21. LA. CODE CRIM. P. art. 703, comment (f).

22. *See id.* art. 769, comment (b).

23. 251 La. 759, 206 So.2d 485 (1968).

24. *Id.* at 766, 206 So.2d at 487.

used, rather than the label attached to such statement, which is sacramental to protection of the defendant's rights under Article 768.

INSTRUCTION TO JURY RE SPECIFIC INTENT

The court's charge to the jury is a historic and fundamental feature of the jury trial. It serves to enlighten the jury, composed of laymen, as to the law to be applied in the case being tried. This important aspect of the trial is fully provided for in the Code of Criminal Procedure,[25] and Article 802 includes a requirement that the judge shall charge the jury "as to the law applicable to the case." This necessarily includes instruction as to all elements of the crime charged. Frequently this is accomplished by reading pertinent articles of the Criminal Code. Under Article 807 the state and the defendant may request special charges; but such charges need not be given if they require qualification, are not wholly correct, or if the matter is already included in the general charge.

A significant and controversial issue in *State v. Schoonover*[26] was whether the defendant in an armed robbery trial was entitled to a special instruction as to the Criminal Code meaning of "specific intent."[27] In its general charge, the court had instructed the jury in the language of the armed robbery and theft articles of the Criminal Code,[28] which provide a statement of the elements of the crime of armed robbery.[29] In upholding the trial court's refusal of a special charge as to the nature of the *specific intent* which is essential to theft or robbery, the Supreme Court pointed out that the judge's general charge had made it clear that an intent to deprive the other permanently of the thing taken was essential to the crime of armed robbery.

Dissenting Justice Barham maintained that the trial judge was under a further obligation, at least when specially requested, to define specific intent as distinguished from a general intent. "Without the definition or instruction as to specific intent," stated Justice Barham, "the jury in the instant case determined guilt under a charge which used such general terms as 'intent' and 'intentional'. The jury could have determined that 'the circumstances indicated that the offender, in the ordinary course of human experience, must have adverted to the prescribed crim-

25. LA. CODE CRIM. P. arts. 801-808.
26. 252 La. 211, 211 So.2d 273 (1968).
27. LA. R.S. 14:10(2) (1950).
28. *Id.* 14:65, 67.
29. Armed robbery is an aggravated form of theft—accomplished by force and when armed with a dangerous weapon.

inal consequences as reasonably certain to result from his act or failure to act.' A verdict so predicated upon 'general criminal intent' would be illegal, erroneous and unjust."[30] The distinction between specific criminal intent (essential to theft and robbery) and general criminal intent is an important one which is clearly stated in Article 10 of the Criminal Code.[31]

Where a crime, like theft or robbery, requires a specific intent, the defendant should be entitled, as Justice Barham contends, to a specific instruction as to the precise legal nature of such an intent. The best way to phrase such an instruction is in conformity with the language of the Criminal Code definition, and this had been done in the requested special instruction.

CHARGE ON CONSPIRACY IN TRIAL OF MULTIPLE DEFENDANTS

In *State v. Skinner*[32] the Louisiana Supreme Court disposed of fourteen bills of exceptions with expertise, conciseness, and clarity. There was one issue, however, where some unnecessarily broad statements may result in obfuscation, rather than clarification, unless the court's actual holding is carefully kept in mind. That was the much-discussed bill of exceptions number 29 which challenged the propriety of the trial judge's elaborate charge on the law of conspiracy.

In *Skinner* three defendants were jointly charged, tried and convicted for the illegal possession and sale of narcotics. It is significant that the defendants were not charged or on trial for a criminal conspiracy to possess and sell narcotics;[33] and it was recognized by the Supreme Court that a joint charge against several of committing an offense does not operate as a charge of criminal conspiracy, which "is a separate and distinct offense from the completed crime."[34] In such a case the separate

30. 211 So.2d 261, 281 (La. 1968).
31. LA. R.S. 14:10 (Criminal Intent) (1950).
"Criminal intent may be specific or general.
"(1) Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act.
"(2) General criminal intent is present whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act."
32. 251 La. 300, 204 So.2d 370 (1967).
33. LA. R.S. 14:26 (Criminal Conspiracy) (1950).
34. State v. Gunter, 208 La. 694, 23 So.2d 305, quoted at 251 La. 300, 311, 204 So.2d 374 (1968).

offense of criminal conspiracy, unlike the lesser included offense of attempt,[35] would not be a responsive verdict.

While conspiracy is not a responsive verdict, the existence of a conspiracy or combination may have other relevance to the case where multiple defendants are charged with joint commission of a crime. Thus, Justice Sanders, who dissented at the original hearing, pointed out and cited authorities for the proposition that "it is well settled that when multiple defendants are charged with a substantive offense, evidence is admissible at the trial of a conspiracy to commit the crime charged. . . . When such evidence has been offered, the Court may properly give an instruction to the jury pertaining to conspiracy between the defendants, although the indictment or bill of information does not charge conspiracy."[36] Justice Hamiter's majority opinion aptly pointed out that the better form of instruction would be concerning the liability as "principals" of those who aid and abet a crime.[37] Nevertheless, there is sound authority for denominating the joint participants as "conspirators."[38]

Even clearer support for the giving of a charge on conspiracy was found in the evidence rule[39] that the jury may consider acts and declarations of a co-defendant in the furtherance of their common criminal enterprise as binding on a defendant, but only if "a prima facie case of conspiracy" has been established.[40]

For the purposes stated above, it would appear that a conspiracy charge will be appropriate in some cases where several defendants are jointly tried for the basic offense, but have not been charged with the separate crime of criminal conspiracy.[41] However, the *Skinner* opinion should be construed with care and not unduly extended. There are some unduly broad dicta statements in the various opinions of the Supreme Court Justices, such as Justice Hawthorne's statement that "it was the duty of the court to charge the jury fully as to the law of conspiracy in this case, as the defendant is jointly charged with murder,

35. LA. R.S. 14:27 (1950).
36. 251 La. 300, 321-22, 204 So.2d 370, 377 (1967).
37. *Id.* at 317, 204 So.2d at 376. *See* LA. R.S. 14:24 (Principals) (1950).
38. *See* authorities cited in Justice Hamlin's opinion on rehearing, 251 La. 300, 364-66, 204 So.2d 370, 393 (1967).
39. LA. CODE CRIM. P. art. 455.
40. *See* Justice Hawthorne's dissent at original hearing, 251 La. 300, 323, 204 So.2d 370, 378 (1967).
41. They could not be charged with both the basic offense and criminal conspiracy in the same indictment in view of the general joinder prohibition of LA. CODE CRIM. P. art. 493.

and the indictment necessarily involves conspiracy."[42] Similarly, Justice Hamlin broadly states, in his majority opinion on a rehearing, "it has been held under the jurisprudence of this court that where an indictment charges that the crime was committed by two or more persons, such an indictment necessarily involves a conspiracy,"[43] and concurring Justice McCaleb declares that it "is well settled that the judge is obliged to give a charge on conspiracy in prosecutions for a crime committed by two or more persons."[44] These statements, when read in the light of the facts of *Skinner* and the opinion as a whole, assume much less sweeping proportions.

Actually, trial judges would be wise to be more specific and not phrase their conspiracy instructions in the broad fashion that was employed by the trial judge in *Skinner*. In general, it would be much clearer to phrase instructions in terms of the principal article of the Criminal Code, and when the special evidence rule is to be invoked the instruction should follow the pattern of that rule. In any event, the instruction should make it clear that the defendants were not being charged with the separate crime of criminal conspiracy.

HABEAS CORPUS

The American Bar Association's tentative draft of "Standards Relating to Post-Conviction Remedies" stresses the need for more complete state procedures for post-conviction review, and recommends the standards for such review. An increasing number of states have recently adopted special post-conviction statutes, or extended their post-conviction relief by an expansion of the habeas corpus remedy.[45] Rather than set up an elaborate post-conviction remedy, the Louisiana Code of Criminal Procedure of 1966 revised Louisiana's habeas corpus procedures and expanded the remedy to include such basic defenses as double jeopardy, time limitations, and the defendant's conviction "without due process of law." Violation of "due process" requirements is a ground for relief in all complete post-conviction procedures.[46]

42. 251 La. 300, 325, 204 So.2d 370, 379 (1967).
43. *Id.* at 365, 204 So.2d at 393.
44. *Id.* at 369, 204 So.2d at 394.
45. Tentative Draft, American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Post-Conviction Remedies. *See* Commentary 23-97 and Appendix C: Table of Post Conviction Acts 112.
46. *See* A.B.A. Standards. "2.1 *Grounds for relief.*
"A post-conviction remedy ought to be sufficiently broad to provide relief
"(a) for meritorious claims challenging judgments of convictions, including claims:
"(i) that the conviction was obtained or sentence imposed in violation

Two important considerations led to the inclusion of "conviction without due process of law" in Louisiana's expanded habeas corpus remedy. All courts, state and federal alike, are interested in making sure that fundamental due process shall be followed in criminal trials, and it is desirable to provide defendants with a prompt state remedy where due process has been denied. It was also hoped, as was pointed out in the Law Institute's Comment[47] that providing a state post-conviction remedy would reduce the necessity of federal intervention.

The new Louisiana habeas corpus procedure has certain built-in safeguards against clogging court dockets with frivolous claims or with a reiteration of claims that have already been fully considered in prior proceedings in the case. Under Article 354 the writ will not be granted and the petition dismissed without a hearing where the application is patently unfounded and without substance.

Just such a case was presented in *State of Louisiana ex rel. Barksdale v. Dees, Acting Warden, Louisiana State Penitentiary.*[48] In *Barksdale* the petitioner had been convicted of aggravated rape and sentenced to death. The conviction and sentence were affirmed by the Louisiana Supreme Court and the United States Supreme Court denied certiorari. The state opposed an application for a writ of habeas corpus on the ground that the petition was insufficient on its face, since all grounds presented either had been passed upon on the trial of the merits or were untenable under the law. The trial court overruled the state's opposition and the Louisiana Supreme Court issued a writ of certiorari to review the trial court's ruling.[49] After reviewing the grounds urged in petitioner's application, the Supreme Court concluded that there had been "no denial of due process" and that the application should be "denied and dismissed without a hearing."

---

of the Constitution of the United States or the constitution or laws of the state in which the judgment was rendered; . . . ."

In accord with this standard the Georgia Habeas Corpus Act of 1967 (Ga. Act 562 of 1967) provides a new Code section 50-127 which authorizes a prisoner to bring a writ of habeas corpus on the ground "that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of the State of Georgia or the laws of the State of Georgia. . . ."

47. LA. CODE CRIM. P. art. 362, comment (i) (4) and (j).

48. 252 La. 434, 211 So.2d 318 (1968).

49. *See* LA. CODE CRIM. P. art. 369, comment continues the former procedure whereby review of district court habeas corpus rulings are by discretionary writ, rather than by appeal.

Petitioner's main claim was racial discrimination, alleging that there had been a systematic exclusion of all but a token number of Negroes from the grand jury and petit jury venire of Orleans Parish. In overruling this contention, the Supreme Court pointed out that "these identical issues were passed upon on the merits by the district court, the Louisiana Supreme Court and the United States Supreme Court on Barksdale's trial, appeal and application for certiorari."[50] It would be a perversion of the writ of habeas corpus to use the device as a vehicle for reconsideration of issues which previously have been fully considered and finally determined.[51] If substantial new evidence or issues had been presented in the habeas corpus application, the interests of justice would have dictated that they should be considered. No such new evidence or substantial new issue was presented in *Barksdale.*

The other alleged grounds were without any real merit and were properly overruled, with brief treatment, in Justice Barham's opinion.

In a final analysis, the application for a wirt of habeas corpus was insufficient on its face and should have been dismissed by the trial judge. For the same reasons, the Supreme Court, acting in its general supervisory capacity, was justified in ordering the writ dismissed.

Justice Barham's opinion in *Barksdale* also raises a question, by way of dictum, as to the effectiveness of state habeas corpus remedies to reduce federal review of state convictions on "due process" grounds. Justice Barham suggests that "any attempt by a state to preclude federal intervention by providing its own post-conviction review of federally-based claims will merely establish state court services to be supervised and superintended by the federal district court."[52] This statement may be open to question, since there are indications that federal courts will take notice of (and often defer to) state court procedures if they feel the remedy is "swift and imperative." In *Mobley v. Dutton,*[53] for example, the Fifth Circuit Court of Appeals, noting that

50. "This court thoroughly disposed of all the arguments made by petitioner in regard to systematic exclusion in selection of jurors in State v. Barksdale, 247 La. 198, 170 So.2d 374, 379-384. This court, with Mr. Justice Summers as its organ, discussed these issues at length and in detail, and found no planned systematic discrimination." 211 So.2d 318, 324 (La. 1968).

51. *See* A.B.A. STANDARDS § 6.1(a), which ascribes finality to grounds for post-conviction relief "which have been fully and finally litigated in the proceedings leading to the judgment of conviction."

52. 211 So.2d 318, 322 (La. 1968).

53. 380 F.2d 14 (5th Cir. 1967).

Georgia had recently instituted a new post-conviction remedy, decided to hold petitioner's application for habeas corpus in abeyance until the new Georgia remedy could be tried. The same "hold-in-abeyance" attitude toward new state post-conviction remedies can be found in a number of other cases in widely divergent geographical areas, including the courts of appeals in the third, ninth and tenth circuits.[54]

It is true that in some circuits the federal courts have taken a negative approach, announcing that *unless* the state demonstrates a "swift and imperative" remedy, federal courts will grant application for habeas corpus.[55] At present, the effectiveness of state "due process" remedies is, at the worst, an open question; and it would be premature to jettison the "due process" ground from Louisiana's expanded post-conviction remedy.

The guiding principle in this matter should, hopefully, be the one enunciated in *Fay v. Noia,* where Mr. Justice Brennan stated that, "it would be unseemly in our dual system of government for a federal district court to upset a state court conviction without an opportunity for the state courts to correct a constitutional violation."[56]

EVIDENCE

*George W. Pugh**

BURDEN OF PROOF
"No Doubt at All"

What is the burden of proof required to change an entry on a birth certificate as to race? *State ex rel. Pritchard v. Louisiana State Board of Health*[1] was an action brought by a person designated as "colored" on her birth certificate to correct it to reflect that she is a member of the white race. The court considered "established" that relator had "lived as a white person"

54. In Hill v. Dutton, 277 F. Supp. 324 (N.D. Ga. 1967), the court agreed that "Georgia has equipped itself with flexible adequate tools to meet Georgia's responsibility in the vindication of federal constitutional rights in the trial of criminal cases. This is where it belongs. The role of the Federal Courts will be, as it should be, more and more reduced." *Id.* at 326. *See also* United States *ex rel.* Singer v. Myers, 384 F.2d 279 (3d Cir. 1967); United States *ex rel.* Walker v. Young, 388 F.2d 675 (9th Cir. 1967); Kennell v. Crouse, 384 F.2d 811 (10th Cir. 1967); Childress v. Beto, 273 F. Supp. 401 (S.D. Tex. 1967); Knox v. Maxwell, 277 F. Supp. 593 (N.D. Ohio 1967).

55. See, *e.g.*, United States *ex rel.* Harper v. Rundle, 278 F. Supp. 819 (E.D. Pa. 1968); United States *ex rel.* Shelton v. Rundle, 279 F. Supp. 1013 (E.D. Pa. 1967).

56. 372 U.S. 391, 419-20 (1963).

*Professor of Law, Louisiana State University.

1. 198 So.2d 490 (La. App. 4th Cir. 1967).