MOB VIOLENCE AND THE KU KLUX KLAN ACT: STATE OF THE LAW AFTER *PARK v. CITY OF ATLANTA*[*]

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During Reconstruction, Congress enacted the Civil Rights Act of 1871 (Act),[1] also known as the Ku Klux Klan Act, which established different remedies for the disorder, intimidation, and violence the Ku Klux Klan instigated against black citizens and their white sympathizers. The portion of the statute concerning civil conspiracy, section 2 of the Act, is now codified in relevant part at 42 U.S.C. § 1985(3).[2] The Act also "provided a civil penalty against persons who knew of and failed to prevent § 2 violations,"[3] which provision is now codified at 42 U.S.C. § 1986.[4] Therefore, there can be no § 1986

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Ms. Woodward represented the City of Atlanta before the United States District Court for the Northern District of Georgia and argued the case before the Eleventh Circuit Court of Appeals. For a summary of *Park v. City of Atlanta*, see Jeremy Holt, Recent Developments, 27 STETSON L. REV. 988 (1998).

1. Civil Rights Act of 1871, ch. 22, 17 Stat. 13 (codified as amended at 42 U.S.C. §§ 1983, 1985, 1986 (1994)).

2. *See* 42 U.S.C.A. § 1985(3) historical and statutory notes (West 1994). Section 1985(3) provides:

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

Id. § 1985(3).

3. Briscoe v. Lahue, 460 U.S. 325, 336 & n.17 (1983).

4. *See* 42 U.S.C.A. § 1986 historical and statutory notes (West 1994). Section 1986

violation without a § 1985 conspiracy. As Justice O'Connor has explained, "Although the immediate purpose of § 1985(3) was to combat animosity against blacks and their supporters, the language of the Act, like that of many Reconstruction statutes, is more expansive than the historical circumstances that inspired it."[5]

While it is without question that these code sections provide a remedy for covered violations to persons of all races,[6] and perhaps even to other classes[7] as well, it is also clear that Congress did not

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provides:

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

Id. § 1986.

5. Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 345–46 (1993) (O'Connor, J., dissenting) (citation omitted).

6. In *Park v. City of Atlanta*, 120 F.3d 1157, 1161–62 (11th Cir. 1997), the Eleventh Circuit stated that the defendants "maintain that [the storeowners'] status as non-African Americans precludes them from the protection of § 1985(3)." The court, however, misunderstood the defendants' brief appellate argument that African-Americans are the only group protected by the Thirteenth Amendment's proscription against badges and incidents of slavery (as African-Americans are the only group to have been enslaved in this country), discussing this point broadly in terms of the § 1985(3) animus requirement instead of in the context of the Thirteenth Amendment. In their appellate brief, when discussing the invidiously discriminatory animus element of a § 1985(3) conspiracy, the defendants conceded that the record is in dispute whether the mob that attacked the plaintiffs' businesses did so because of the storeowners' race. *See* Brief of Appellees at 45 & n.9, Park v. City of Atlanta, 120 F.3d 1157 (11th Cir. 1997) (No. 96-8512).

7. In *Park*, the Eleventh Circuit noted that it need not decide under the facts at issue "whether a conspiracy motivated by invidiously discriminatory intent other than racial bias would be actionable." 120 F.3d at 1162 n.7. Other courts, however, have considered whether classes other than race are covered by the Ku Klux Klan Act. The Supreme Court determined that conspiracies motivated by economic or commercial bias are not actionable under § 1985(3). *See* United Bhd. of Carpenters & Joiners of Am., Local 610 v. Scott, 463 U.S. 825, 837–38 (1983). The Eleventh Circuit has determined that § 1985(3) does not protect whistleblowers as a class. *See* Childree v. UAP/GA AG CHEM, Inc., 92 F.3d 1140, 1147 (11th Cir. 1996). Courts are split regarding whether the dis-

intend to create a "general federal tort law."[8] Thus, the Supreme Court has interpreted § 1985(3) to furnish a remedy for purely private misconduct under very limited circumstances.[9] Though there is a dearth of caselaw in this area, existing precedent does not support a finding of a § 1985(3) conspiracy in most cases in which a destructive crowd of private citizens assaults other individuals or vandalizes and loots their property, even if the villains are motivated by the victims' race. The case of *Park v. City of Atlanta*[10] illustrates that not every reprehensible act of mob violence is covered by this statute that addresses civil conspiracies to deprive individuals of their constitutional rights. *Park* represents a missed opportunity for the Eleventh Circuit to clarify this rather obscure area of civil rights jurisprudence.

I. PARK v. CITY OF ATLANTA: *FACTUAL AND PROCEDURAL HISTORY*

On April 30, 1993, two Korean-American families — the Parks, who owned and operated a grocery business, and the Nos, who owned and operated a package store — initiated a civil action in the United States District Court for the Northern District of Georgia, Atlanta Division, pursuant to 42 U.S.C. §§ 1981, 1983, 1985(3), and 1986, as well as the Fourteenth Amendment to the United States Constitution.[11] In addition, they raised several state law claims.[12]

One year earlier, both businesses, which were in the immediate

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abled are considered a class under § 1985(3). *Compare* Wilhelm v. Continental Title Co., 720 F.2d 1173, 1176–77 (10th Cir. 1983) (concluding that handicapped individuals are not considered a class under § 1985(3)), *and* Larson v. School Bd., 820 F. Supp. 596, 601 (M.D. Fla. 1993) (granting the defendants' motion to dismiss where the plaintiff's § 1985(3) claim was "predicated upon alleged discrimination on the basis of handicap or physical condition"), *with* Lake v. Arnold, 112 F.3d 682, 685–86 (3d Cir. 1997) (determining that § 1985(3) protects the mentally retarded as a class). Noting that "seven courts of appeals have held that § 1985(3) embraces suits premised on gender-based conspiracies," a panel of the Eleventh Circuit concluded that women are a class covered by the statute. Lyes v. City of Riviera Beach, 126 F.3d 1380, 1390–91 & n.21 (11th Cir. 1997). However, the Eleventh Circuit vacated this panel decision and the case will be reheard *en banc*. *See* Lyes v. City of Riviera Beach, 136 F.3d 1295, 1296 (11th Cir. 1998).

8. Griffin v. Breckenridge, 403 U.S. 88, 101–02 (1971).

9. *See Bray*, 506 U.S. at 278.

10. 120 F.3d 1157 (11th Cir. 1997).

11. *See* Park v. City of Atlanta, 938 F. Supp. 836, 836, 838, 841–42 (N.D. Ga. 1996), *rev'd*, 120 F.3d 1157 (11th Cir. 1997).

12. *See id*. at 841.

vicinity of four historically black universities known collectively as the Atlanta University Center, were vandalized and looted by a mob of college students and others who had gathered in response to the jury verdict acquitting several white police officers accused of unlawfully beating an African-American suspect, Rodney King, in the criminal case of *People v. Powell*.[13] Both families were in an apartment above the supermarket watching news reports of the civil unrest when members of the crowd began throwing rocks and breaking into the No's liquor store.[14] After entering the liquor store and removing cases of alcoholic beverages, the crowd broke into the adjacent supermarket, where they eventually discovered the storeowners and chased them onto the roof.[15] The storeowners barricaded the door to the roof, but they were assaulted by the crowd on the street who threw rocks and allegedly shouted racial epithets at them.[16] While the storeowners were on the roof, a police helicopter dropped tear gas in the area and dispersed the crowd.[17] Police officers then moved into the area in formation to clear the streets and to rescue the storeowners.[18]

After an extended discovery period, the district court granted, in part, the defendants' motion for summary judgment, dismissed all the federal claims and declined to exercise supplemental jurisdiction over the state claims.[19] Noting that "the court is unable to reconcile Plaintiffs' claim that the city allegedly agreed to withhold all protection to the Korean-owned stores with the city's sound response of sending in an entire corps of officers equipped in riot gear and employing tear gas to disperse the rampant mob," the district court dismissed the storeowners' allegation under § 1985(3) that the City and its then-mayor and then-police chief "conspired to withdraw necessary police protection . . . so as to allow the mob to attack [the] Plaintiffs' stores."[20] Accordingly, the district court also dismissed the § 1986 claim, stating that "[b]ecause § 1986 is a derivative of § 1985, Plaintiffs cannot establish a violation of § 1986 without establishing

13. *See Park*, 120 F.3d at 1159; *Park*, 938 F. Supp. at 838.
14. *See Park*, 938 F. Supp. at 839.
15. *See id*. at 839–40.
16. *See id*. at 840.
17. *See id.*
18. *See id*. at 841.
19. *See id*. at 847.
20. *Park*, 938 F. Supp. at 845–46.

a violation of § 1985."[21] Concluding that the plaintiffs failed to establish their § 1985 claim, the district court dismissed their derivative § 1986 claim.[22]

The storeowners appealed to the United States Court of Appeals for the Eleventh Circuit, which affirmed the district court on all issues raised on appeal except dismissal of the § 1986 claim, which, as discussed above, requires a § 1985(3) conspiracy.[23] At the appellate level, the plaintiffs argued that the requisite § 1985 conspiracy did exist, alleging that the mob of students joined together amongst themselves in concerted action to deny the Korean storeowners their civil rights on account of their race.[24] In support of the proposition that the defendants need not be participants in the § 1985 conspiracy to be held liable under § 1986, the storeowners relied on nonbinding legal authority.[25] The Eleventh Circuit agreed that a defendant need not be a participant in a § 1985 conspiracy to be liable under § 1986.[26] Because the district court failed to address two issues, the appellate court remanded the case to the district court for consideration of the following: "whether the demonstrators were involved in a § 1985(3) conspiracy," and whether the defendants "might be liable under § 1986 based on a § 1985(3) conspiracy by members of the crowd."[27]

The Eleventh Circuit specifically noted that it was not deciding three issues: "(1) whether a conspiracy of any type existed among the demonstrators; (2) whether the [City] or [its] agents had knowledge of the alleged conspiracy; and (3) whether a constitutional violation sufficient to maintain a successful claim under § 1985 has been proven."[28] The court explained:

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21. *Id*. at 846 (citing Mian v. Donaldson, Lufkin & Jenrette Sec. Corp., 7 F.3d 1085, 1088 (2d Cir. 1993); Galloway v. Louisiana, 817 F.2d 1154, 1159 n.2 (5th Cir. 1987)).

22. *See id*.

23. *See Park*, 120 F.3d at 1159 & n.1, 1162–63.

24. *See id*. at 1161–62.

25. *See* Appellants' Brief at 17, Park v. City of Atlanta, 120 F.3d 1157 (11th Cir. 1997) (No. 96-8512) (citing Peck v. United States, 470 F. Supp. 1003, 1012 (S.D.N.Y. 1979)).

26. *See Park*, 120 F.3d at 1162; *see also* Jeremy Holt, Recent Developments, 27 STETSON L. REV. 988, 989 (1998). Relying on the Third Circuit case of *Clark v. Clabaugh*, 20 F.3d 1290, 1298 (3d Cir. 1994), the Eleventh Circuit also held that negligence is sufficient to maintain a § 1986 claim. *See Park*, 120 F.3d at 1160.

27. *Park*, 120 F.3d at 1161, 1162–63.

28. *Id*. at 1162 n.8.

> Because the district court did not consider the issue in its totality, we are not able to conduct a meaningful review of the evidence of the constitutional right alleged. It is clear that the [storeowners] must prove that they suffered from conduct that Congress may reach under its power to protect individual constitutional rights against private encroachment.[29]

While it is true that the district court did not address whether the defendants might be liable under § 1986 based on their purported knowledge of a § 1985(3) conspiracy among the rioters, the Eleventh Circuit would have better served the judicial system to dismiss this claim rather than to remand it. As a matter of law, such a private conspiracy does not satisfy the elements of § 1985(3).

II. SECTION 1985(3) CONSPIRACIES TO DEPRIVE CITIZENS OF CIVIL RIGHTS

In paragraph 84 of their amended complaint, the plaintiffs asserted that "the mob . . . conspired . . . to deprive . . . Plaintiffs of the equal protection of the laws."[30] Thus, the plaintiffs invoked the first clause of § 1985(3), the "deprivation clause." This clause prohibits two or more persons from conspiring "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws."[31]

A plaintiff must prove the following four elements to succeed on a § 1985(3) deprivation claim:

> (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.[32]

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29. *Id*. at 1162.
30. Amended Complaint for Injunction and Damages at ¶ 84, Park v. City of Atlanta, 938 F. Supp. 836 (N.D. Ga. 1996) (1:93-CV-0952-JOF).
31. 42 U.S.C.A. § 1985(3) (West 1994).
32. Lucero v. Operation Rescue, 954 F.2d 624, 627 (11th Cir. 1992) (quoting United Bhd. of Carpenters & Joiners of Am., Local 610 v. Scott, 463 U.S. 825, 828–29 (1983)).

The first element, a civil conspiracy, is:

> "a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties `to inflict a wrong against or injury upon another,' and `an overt act that results in damage.'"[33]

An agreement requires communication among the conspirators.[34] The storeowners had to prove an agreement to inflict a wrong upon them; the rioters must have had a meeting of the minds.[35]

A. Purpose of Conspiracy: Animus Requirement

Assuming that a mob is capable of having a meeting of the minds, as opposed to engaging in independent parallel behavior, and that the demonstrators did in fact conspire to attack the plaintiffs' stores, the remaining issue to consider is whether the purpose of such a conspiracy was to deprive the storeowners of the equal protection of the laws.

In *Griffin v. Breckenridge*,[36] the Supreme Court overruled its earlier decision in *Collins v. Hardyman*,[37] which construed § 1985(3) to reach only conspiracies involving state action.[38] Upon examining the language of § 1985(3), and in light of the other sections of the Civil Rights Act of 1871 and the legislative history of the code section, the *Griffin* Court held that it is "evident that all indicators — text, companion provisions, and legislative history — point unwaveringly to § 1985(3)'s coverage of private conspiracies."[39] Quoting one congressman who insisted that Congress did not have a right to

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33. Hampton v. Hanrahan, 600 F.2d 600, 620–21 (7th Cir. 1979) (quoting Rotermund v. United States Steel Corp., 474 F.2d 1139, 1145 (8th Cir. 1973)).

34. *See* Bailey v. Board of County Comm'rs, 956 F.2d 1112, 1122 (11th Cir. 1992).

35. *Cf*. Byrd v. Local Union No. 24, Int'l Bhd. of Elec. Workers, 375 F. Supp. 545, 558 (D. Md. 1974) (determining that in order "to be a member of a conspiracy," one must expressly or impliedly agree "with one or more . . . entities to inflict a wrong or injury upon another").

36. 403 U.S. 88 (1971).

37. 341 U.S. 651 (1951).

38. *See Griffin*, 403 U.S. at 92–96; *see also* Collins v. Hardyman, 341 U.S. 651, 655–63 (1951).

39. *Griffin*, 403 U.S. at 101.

punish an assault and battery just because the crime was committed by two or more persons within a state, the Court cautioned that § 1985(3)'s coverage of private conspiracies "does not, however, mean that it was intended to apply to all tortious, conspiratorial interferences with the rights of others."[40] The Court imposed an extra-textual animus requirement on the test for a § 1985(3) cause of action, explaining:

> The constitutional shoals that would lie in the path of interpreting § 1985(3) as a general federal tort law can be avoided by giving full effect to the congressional purpose — by requiring, as an element of the cause of action, the kind of invidiously discriminatory motivation stressed by the sponsors of the limiting amendment. *The language requiring intent to deprive of* equal *protection, or* equal *privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action.* The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all.[41]

The complaint at issue in *Griffin* alleged that the white defendants conspired to block passage of the automobile driven by the black plaintiffs who were "traveling upon the federal, state, and local highways"; to detain the plaintiffs by forcing them to exit the car; to batter the driver, who they believed was a civil rights worker; and to threaten all the plaintiffs.[42] The Court noted that "[t]hese allegations clearly support[ed] the requisite animus" based upon race.[43] Likewise, this condition was satisfied by the facts in *Park*; allegations that the crowd screamed "Kill the Koreans!" evidence the "type of racially discriminatory animus sufficient to invoke the protection of § 1985(3)."[44]

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40. *Id*. at 101–02.
41. *Id*. at 102 (emphasis added) (citation and footnotes omitted).
42. *Id*. at 90.
43. *Id.* at 103.
44. Park v. City of Atlanta, 120 F.3d 1157, 1162 (11th Cir. 1997).

B. Private Conspiracies: Target Rights Guaranteed Against Private Infringement

A second extra-textual element is required when the § 1985(3) conspiracy is perpetrated by purely private actors. Noting that the Thirteenth Amendment extends to private as well as official conduct, the *Griffin* Court concluded that § 1985(3) was authorized by the Thirteenth Amendment to create a "statutory cause of action for Negro citizens who have been the victims of conspiratorial, racially discriminatory private action aimed at depriving them of the basic rights that the law secures to all free men."[45] Because the complaint alleged that the conspiracy intended to impair the plaintiffs' right to engage in interstate travel, the Court determined that, if proven true, the plaintiffs could use this evidence to show that they suffered from conduct that Congress may prohibit under its power to protect the right of interstate travel.[46]

Section 1985(3) applies to private conspiracies "aimed at interfering with rights" constitutionally "protected against private, as well as official, encroachment," but does not apply to "private conspiracies that are `aimed at a right'" guaranteed "only against state interference."[47] *United Brotherhood of Carpenters & Joiners of America, Local 610 v. Scott*[48] involved a construction contract to work on a Department of the Army project.[49] The contractor hired employees without regard to union membership.[50] Union members, who organized a protest against the contractor, drove on the construction site, assaulted and beat the contractors' employees, and burned and destroyed construction equipment.[51] The *Carpenters* Court concluded that a purely private conspiracy aimed at depriving citizens of their right to free association protected by the First Amendment does not violate § 1985(3).[52] The First Amendment[53]

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45. *Griffin*, 403 U.S. at 105.
46. *See id*. at 106.
47. Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 268, 278 (1993) (quoting United Bhd. of Carpenters & Joiners of Am., Local 610 v. Scott, 463 U.S. 825, 833 (1983)).
48. 463 U.S. 825 (1983).
49. *See id*. at 827.
50. *See id*.
51. *See id*. at 825.
52. *See id*. at 830.
53. The First Amendment to the United States Constitution provides: "Congress

prohibits either Congress or a state, via the Fourteenth Amendment, from making any law abridging the freedom of speech or the right of the people peaceably to assemble; it does not apply to private conduct.[54]

Nor is the federal right to abortion protected against private impairment. *Bray v. Alexandria Women's Health Clinic*[55] involved an anti-abortion organization's protests during which its members trespassed on clinic property and obstructed ingress and egress to the clinic.[56] The *Bray* Court rejected the plaintiffs' argument that the private conspiracy impaired the right to interstate travel because some patients seeking abortion services travel to a clinic in another state, on the ground that "[a] conspiracy is not `for the purpose' of denying equal protection simply because it has an effect on the protected right"; rather, the impairment of the affected right must be the "conscious objective of the enterprise."[57]

As for the right to abortion, the Court held that impairment of this right by a purely private conspiracy does not violate § 1985(3).[58] The Court noted that abortion, which "is much less explicitly protected by the Constitution than . . . the right of free speech rejected . . . in *Carpenters*," is considered to be "one element of a more general right of privacy" or liberty.[59] Using the example that a burglar does not violate the Fourth Amendment, nor a mugger the Fourteenth, the Supreme Court explained that general rights, such as the Fourteenth Amendment right to liberty, are "not protected against private infringement."[60]

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> No *State* shall make or enforce any law which shall abridge the

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shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I.

54. *See id*.

55. 506 U.S. 263 (1993).

56. *See id*. at 266.

57. *Id*. at 274–75.

58. *See id*. at 278.

59. *Id*. (citing Planned Parenthood v. Casey, 505 U.S. 833, 846–51 (1992); Roe v. Wade, 410 U.S. 113, 152–53 (1973)).

60. *Id*.

> privileges or immunities of citizens of the United States; nor shall any *State* deprive any persons of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[61]

The weight of authority supports the conclusion that there is no violation of the Fourteenth Amendment absent state action.[62]

There has been a great deal of confusion over the meaning of "equal protection" in 42 U.S.C. § 1985(3). It appears that the Illinois district court which decided *Stevens v. Tillman*[63] misinterpreted the Supreme Court's decision in *Griffin*. The *Griffin* Court concluded that, while the language of the deprivation clause of § 1985(3) prohibiting conspiracies "for the purpose of depriving . . . any person . . .

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61. U.S. CONST. amend. XIV, § 1 (emphasis added).

62. *See* United States v. Harris, 106 U.S. 629, 638 (1883) ("The fourteenth amendment prohibits a state from depriving any person of life, liberty, or property without due process of law, or from denying to any person the equal protection of the laws; but this provision does not add anything to the rights of one citizen as against another." (quoting United States v. Cruikshank, 92 U.S. 542, 554–55 (1875))); *see also Carpenters*, 463 U.S. at 831–32; Terry Properties, Inc. v. Standard Oil Co., 799 F.2d 1523, 1533–34 (11th Cir. 1986). *But see* Stevens v. Tillman, 568 F. Supp. 289, 293 (N.D. Ill. 1983) (holding, pursuant to the plaintiff's equal protection claim, that "state action is not required in a § 1985(3) claim premised upon racial discrimination of any hue").

63. 568 F. Supp. 289 (N.D. Ill. 1983). In *Stevens*, the plaintiff alleged that the defendants violated her Fourteenth Amendment rights. *See id.* at 293. The defendants argued that because the plaintiff's claim under § 1985(3) was "premised upon the equal protection clause of the Fourteenth Amendment, which requires state action," the claim should be dismissed, as there was "no dispute regarding the absence of state action." *Id.* at 292. Recognizing that "[t]he Seventh Circuit has repeatedly held that state action is required in order to state a § 1985(3) claim premised upon a violation of the Fourteenth Amendment," the district court relied on *Griffin*'s holding that § 1985(3) reaches private conspiracies motivated by "some racial or perhaps otherwise class-based invidiously discriminatory animus" in concluding that a § 1985(3) claim premised on racial discrimination does not require state action. *Id.* at 293 (citing Williams v. St. Joseph Hosp., 629 F.2d 448 (7th Cir. 1980); Murphy v. Mount Carmel High Sch., 543 F.2d 1189 (7th Cir. 1976); Cohen v. Illinois Inst. of Tech., 524 F.2d 818 (7th Cir. 1975); Dombrowski v. Dowling, 459 F.2d 190 (7th Cir. 1972)). The court, however, does not distinguish between the equal protection clause of the Fourteenth Amendment and the phrase "equal protection" used in § 1985(3). *See id.* at 293 n.3 ("The Civil Rights Act of 1871 creates a cause of action for conspiracy to deny equal protection, but not for a conspiracy to deny due process."). In fact, the court distinguished the line of cases supporting the necessity of alleging state action in a § 1985(3) claim based on the Fourteenth Amendment because those cases did not involve reverse racial discrimination. *See id.* at 293. The *Stevens* case, however, does not cite *Carpenters*, decided by the Supreme Court only three days earlier, or *Bray*, which affirmed the requirement that a private conspiracy must have the intent to deprive persons of a right that is guaranteed against private impairment to violate § 1985(3).

of the equal protection of the laws" is "*similar* to that of § 1 of the Fourteenth Amendment" which requires state action, it is not to be interpreted in the same manner.[64] Rather, the Court opined that the omission of any reference to state action in § 1985(3) should be interpreted as congressional intent to cover all deprivations of "equal protection of the laws" and "equal privileges and immunities under the laws," whether by official action or private conduct.[65] In 1983, the Supreme Court further explained its decision in *Griffin* by holding that § 1985(3) "is not limited by the constraints of the Fourteenth Amendment."[66]

Like all the civil rights statutes, § 1985(3) "provides no substantive rights";[67] rather, "[t]he rights, privileges and immunities that § 1985(3) vindicates must be found elsewhere."[68] When the right vindicated is protected only against state action, a plaintiff must prove that the state was involved in or affected by the conspiracy.[69]

Thus, private actors can be liable for a violation of Fourteenth Amendment rights, such as equal protection, only through a conspiracy with public officials.[70] The right to equal protection under the Fourteenth Amendment does not constitute a protected right under § 1985(3) absent proof of state action.[71]

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64. Griffin v. Breckenridge, 403 U.S. 88, 96 (1971) (emphasis added).

65. *Id*. at 97.

66. United Bhd. of Carpenters & Joiners of Am., Local 610 v. Scott, 463 U.S. 825, 832 (1983).

67. Great Am. Fed. Sav. & Loan Ass'n v. Novotny, 442 U.S. 366, 372 (1979); *see also* Wilson v. Garcia, 471 U.S. 261, 278 (1985) (stating: "Section 1983 . . . does not itself create any substantive rights") (citing Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 617–18 (1979)). Section 1985(3) provides only a remedy. *See Novotny*, 442 U.S. at 372.

68. *Carpenters*, 463 U.S. at 833.

69. *See id*.

70. *See* Baker v. McDonald's Corp., 686 F. Supp. 1474, 1480 (S.D. Fla. 1987) (citing Terry Properties, Inc. v. Standard Oil Co., 799 F.2d 1523, 1533–34 (11th Cir. 1986)). Notwithstanding language in *Carpenters* that "an alleged conspiracy to infringe First Amendment rights is not a violation of § 1985(3) unless it is proved that the state is involved in the conspiracy or that the aim of the conspiracy is to influence the activity of the state," the Tenth Circuit rejected the argument that a conspiracy aimed at influencing the conduct of the state is covered by § 1985(3). Tilton v. Richardson, 6 F.3d 683, 687 (10th Cir. 1993) (quoting *Carpenters*, 463 U.S. at 830). In reaching this conclusion, the court relied on *Bray*'s holding that this provision "does not cover private conspiracies aimed at rights protected only against State encroachment." *Id*. (quoting Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 283 (1993)).

71. *See* Lowden v. William M. Mercer, Inc., 903 F. Supp. 212, 219 (D. Mass. 1995) (citing Snyder v. Talbot, 836 F. Supp. 26, 28, 31 (D. Me. 1993); Sampson v. Village Dis-

In *Park*, the Eleventh Circuit determined that the "district court properly dismissed . . . allegations of a § 1985(3) conspiracy among [the City of Atlanta] and [its] agents."[72] Thus, any conspiracy among the demonstrators must be aimed at a right guaranteed against private impairment to be actionable under § 1985(3).[73]

Very few constitutional rights are protected against private impairment.[74] To date, the Supreme Court has only recognized, under the Thirteenth Amendment context, "the right to be free from involuntary servitude" and "the right of interstate travel."[75] Both of these rights were at issue in *Griffin*.[76] Neither of these rights was impacted by the demonstrators in *Park*.[77]

1. The Thirteenth Amendment

The Thirteenth Amendment[78] prohibits involuntary servitude

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count Outlet, Inc., 832 F. Supp. 1163, 1169 (N.D. Ill. 1993); Denchy v. Education & Training Consultants of Pa., Inc., 803 F. Supp. 1055, 1059, 1062 (E.D. Pa. 1992); Peavey v. Polytechnic Inst. of N.Y., 775 F. Supp. 75, 79 (E.D.N.Y. 1991), *aff'd*, 969 F.2d 1042 (2d Cir. 1992)).

72. Park v. City of Atlanta, 120 F.3d 1157, 1161 (11th Cir. 1997).

73. *See id*. at 1162.

74. The Supreme Court has settled that § 1985(3) does not apply to private conspiracies that are aimed at infringing a person's First Amendment right to free speech or at one's right to abortion. *See Bray*, 506 U.S. at 278 (abortion); *Carpenters*, 463 U.S. at 830 (First Amendment). Neither is a private conspiracy to deprive one of his right to freedom of religion guaranteed by the First Amendment nor to "his right to pursue his chosen profession . . . guaranteed by the Fifth and Fourteenth Amendments" violative of § 1985(3). *Tilton*, 6 F.3d at 686.

75. *Bray*, 506 U.S. at 278 (citing United States v. Kozminski, 487 U.S. 931, 942 (1988); United States v. Guest, 383 U.S. 745, 759 n.17 (1966)).

76. *See* Griffin v. Breckenridge, 403 U.S. 88, 105–06 (1971). While they have yet to be identified, other rights may be protected against private impairment. The Supreme Court cautioned: "In identifying these two constitutional sources of congressional power, we do not imply the absence of any other." *Id*. at 107.

77. In *Park*, the plaintiffs made no mention of either the Thirteenth Amendment or their right to interstate travel in their Amended Complaint. Rather, the plaintiffs alleged that the defendants violated their Fourteenth Amendment rights. *See* Amended Complaint for Injunction and Damages, *supra* note 30, at ¶ 82.

78. The Thirteenth Amendment of the United States Constitution provides:

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.

U.S. CONST. amend. XIII.

and prevents imposition of the "badges and incidents of slavery."[79] Courts have held that "[t]he Thirteenth Amendment is implicated primarily when a private individual segregates or humiliates a black person from freely exercising rights guaranteed to all citizens."[80] The Thirteenth Amendment encompasses race, not other classes, such as gender or age.[81]

Involuntary servitude is defined as a "condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process."[82] Most cases under this clause of the Thirteenth Amendment arise in the jail context, such as an inmate who participates in a work program,[83] or a detainee who is required to perform housekeeping chores.[84] This scenario was not present in *Park*.

Pursuant to section 2 of the Thirteenth Amendment, Congress has the power to determine what are the badges and incidents of slavery.[85] Congress has attempted to remove badges and incidents of slavery by passage of laws such as 42 U.S.C. § 1982,[86] which provides that all citizens shall have the same right "to inherit, purchase, lease, sell, hold, and convey real and personal property."[87] Congress also has concluded that interference "with one's enjoyment of a place of public accommodation constitutes a badge of slavery" by passage of Title II of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a–2000a-6,[88] and of 18 U.S.C. § 245(b).[89] Public ac

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79. City of Memphis v. Greene, 451 U.S. 100, 125 (1981); *see also Kozminski*, 487 U.S. at 952.

80. Lowden v. William M. Mercer, Inc., 903 F. Supp. 212, 221 (D. Mass. 1995) (citing Baker v. McDonald's Corp., 686 F. Supp. 1474, 1480 (S.D. Fla. 1987)).

81. *See id*.

82. *Kozminski*, 487 U.S. at 952 (defining involuntary servitude as it applies to criminal prosecutions under 18 U.S.C. §§ 241, 1584).

83. *See*, *e.g.*, Brooks v. George County, Miss., 84 F.3d 157, 162–63 (5th Cir. 1996); Watson v. Graves, 909 F.2d 1549, 1552–53 (5th Cir. 1990).

84. *See*, *e.g.*, Channer v. Hall, 112 F.3d 214, 219 (5th Cir. 1997).

85. *See* Jones v. Alfred H. Mayer Co., 392 U.S. 409, 439–40 (1968).

86. *Id*. at 412–13, 438–39, 443; *cf.* City of Memphis v. Greene, 451 U.S. 100, 102–03, 128–29 (1981) (determining that even though the closing of a two-lane street traversing a white neighborhood would require residents of an adjoining black neighborhood to use an alternate route to travel to the city center, this action did not violate the Thirteenth Amendment or black citizens' right to use property on an equal basis with white citizens).

87. 42 U.S.C.A. § 1982 (West 1994).

88. Fisher v. Shamburg, 624 F.2d 156, 159–60, 162 (10th Cir. 1980) ("[A] racially

commodation was not at issue in *Park*, where it was undisputed that the storeowners were in a private apartment above the grocery store.

2. *Interstate Travel*

Nor can the storeowners successfully argue that the mob sought to deprive them of their right to interstate travel. According to the Supreme Court, a purely intrastate restriction on travel, as actual barriers to movement within the immediate vicinity of abortion clinics subject to protest, does not implicate the constitutional right of interstate travel.[90] Similarly, while the storeowners were prevented from leaving the private apartment above the grocery store, this impacted only intrastate travel. Thus, travel is not a basis for a § 1985(3) violation based upon this purely private conspiracy.

C. Whether Both Extra-Textual Elements Apply to Race-Based Conspiracy Claims?

The law is not well-settled regarding whether both extra-textual elements — animus and a right guaranteed against private impairment — are necessary in all private conspiracy actions. At least one lower court has held that the second extra-textual element does not apply if the first element is based on race.

One circuit court discussed private conspiracies as follows:

> It is thus plain that [§] 1985(3) applies to private conspiracies only in the event that the right aimed at by the conspiracy is one protected against both public and private interference. In short, to state a claim under 42 U.S.C. [§] 1985(3) for a non-racially motivated private conspiracy, if indeed such a claim can be stated, it is necessary to plead, inter alia: 1. that the conspiracy is motivated by a class-based invidiously discriminatory animus; and 2. that the conspiracy is aimed at interfering with rights that by definition are protected against private, as well as official, encroachment.[91]

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motivated conspiracy to interfere with one's enjoyment of a place of public accommodation constitutes a badge of slavery which is a deprivation of equal privileges and immunities under 42 U.S.C. § 1985(3).").

89. *See* United States v. Bledsoe, 728 F.2d 1094, 1097 (8th Cir. 1984).

90. *See* Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 277 (1993).

91. Tilton v. Richardson, 6 F.3d 683, 686 (10th Cir. 1993).

The court did not discuss whether both requirements are necessary for a racially motivated private conspiracy.

One district court suggests that when a conspiracy is racially motivated, state action is not required even when the right targeted by the conspiracy is one normally protected against only official impairment.[92] It is not clear whether this ruling is based upon the "equal protection" language of § 1985(3)[93] or upon the conclusion that, because the "plaintiff has alleged sufficient facts to state a claim recognized as constitutional under the Thirteenth Amendment,"[94] the claim was somehow converted from a Fourteenth Amendment violation[95] to a Thirteenth Amendment violation.[96] Regarding the Thirteenth Amendment, the court mused, "It would be wholly inconsistent with the spirit of both the United States Constitution and the Civil Rights Act of 1871 to hold that a black plaintiff could bring a claim under § 1985(3) alleging racial discrimination without the existence of state action and a white plaintiff could not."[97] This comment assumes that the second prong of the non-textual test applicable to private conspiracies — state action where the conspiracy aims at a right protected only against government interference — does not apply to a racially-motivated conspiracy, presumably because the Thirteenth Amendment does not require state action. This ruling is not consistent with Thirteenth Amendment jurisprudence.

In the event that the *Stevens* court intended to hold that the Thirteenth Amendment applies any time race is a factor, there is more persuasive authority to the contrary. The Fifth Circuit has specifically determined that the Thirteenth Amendment does not extend to each and every abuse predicated upon race.[98] In *Wong v. Stripling*,[99] Dr. Wong, a surgeon of Chinese ancestry and a natural-

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92. *See* Stevens v. Tillman, 568 F. Supp. 289, 293 (N.D. Ill. 1983).

93. Section 1985(3) "creates a cause of action for conspiracy to deny equal protection." *Id*. at 293 n.3. For a discussion regarding equal protection, see *supra* notes 63–66 and accompanying text.

94. *Stevens*, 568 F. Supp. at 293.

95. In *Stevens*, the plaintiff alleged that the defendants violated her Fourteenth Amendment rights. *See id*.

96. *See id*. at 293 & n.3.

97. *Id.* at 293.

98. *See* Wong v. Stripling, 881 F.2d 200, 203 (5th Cir. 1989).

99. 881 F.2d 200 (5th Cir. 1989).

ized United States citizen, was a member of the medical staff at a private hospital.[100] When "the executive committee of the hospital voted to suspend Dr. Wong's staff privileges pending a physical and psychiatric examination," Dr. Wong filed a lawsuit alleging, inter alia, a violation of § 1985(3) on the grounds that the hospital deprived him of his First, Thirteenth, and Fourteenth Amendment rights.[101] Dr. Wong argued that the guarantee of the right to be free from the badges and incidents of slavery "extends to any abuse predicated upon race."[102] The court affirmed the dismissal of this claim, noting that "no court has held that [the Thirteenth Amendment's] words alone create a general right to be free from private racial discrimination in all areas of life."[103]

Notwithstanding the flawed reasoning of the *Stevens* court, it is clear that the Thirteenth Amendment is not implicated in every situation where race is a factor. Thus, there is no support for an argument that the need to satisfy the second prong is obviated where the purpose of a conspiracy is racial bias. Moreover, in *Bray*, the Supreme Court referred to the two requirements in the conjunctive, suggesting that both must be met for a plaintiff to prevail in a deprivation clause case involving a private conspiracy.[104] Although *Bray* involved a non-race-based private conspiracy, there is no basis for imposing a different test where there is racial animus. While this argument was not raised in *Park*, the Eleventh Circuit assumed both prongs are required.[105]

D. The Eleventh Circuit Missed an Opportunity to Dispel Confusion

Unfortunately, the Eleventh Circuit in *Park* declined to determine whether the storeowners proved the second element, that "the intent of the alleged conspiracy was to deprive them of a constitutional right of the type protected by § 1985(3)."[106] Instead, because

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100. *See id*. at 201.
101. *Id*. at 201, 203.
102. *Id*. at 203.
103. *Id.* 203–04.
104. *See* Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 267–68 (1993).
105. *See* Park v. City of Atlanta, 120 F.3d 1157, 1161–62 (11th Cir. 1997).
106. *Id*. at 1161.

the district court had not considered the issue,[107] the appellate court remanded this issue to the district court without guidance. However, the Eleventh Circuit did recognize that "[i]t is clear that the [storeowners] must prove that they suffered from conduct that Congress may reach under its power to protect individual constitutional rights against private encroachment."[108] The court explained that "[e]xamples of such rights are the rights guaranteed by the Thirteenth Amendment and the right of interstate travel"; however, it did not discuss the application of these rights to the case before it.[109] Given the confusion among the lower courts regarding when a purely private conspiracy violates § 1985(3), guidance from the circuit court certainly would have been desirable.

Like the facts in *Wong*, the facts in *Park*, if proven, do not constitute a violation of any law of the United States which would entitle the storeowners to relief under § 1985(3). In fact, because the only right the storeowners alleged to be violated was their Fourteenth Amendment rights, state action is required in order to demonstrate a § 1985(3) conspiracy. It is legally impossible, where there was no state action, for the actions of the mob to constitute a violation of § 1985(3), the predicate for a successful § 1986 claim against the defendants. Thus, the Eleventh Circuit should have dismissed the storeowners' § 1986 claim as a matter of law, or, at a minimum, offered the district court some guidance regarding what conduct violates the Thirteenth Amendment or the right to interstate travel.

None of the § 1986 cases cited by the Eleventh Circuit in *Park* addressed the state action issue, and none of the cases supported a conclusion that state action is not required based upon the facts at issue.[110] Both *Waller v. Butkovich*[111] and *Symkowski v. Miller*[112] involved state action. *Bergman v. United States*,[113] which was not a § 1985(3) action, involved a conspiracy aimed at depriving the

107. *See id*.
108. *Id*. at 1162 (citing Griffin v. Breckenridge, 403 U.S. 88, 106 (1971)).
109. *Id*. (citations omitted).
110. *See generally id*. at 1160–61 (containing the cases cited by the Eleventh Circuit).
111. 584 F. Supp. 909 (M.D.N.C. 1984).
112. 294 F. Supp. 1214 (E.D. Wis. 1969).
113. 579 F. Supp. 911 (W.D. Mich. 1984).

plaintiffs of their right to interstate travel.[114] Although the court in *Park* did not discuss the state action issue, its finding that the storeowners did not proffer admissible proof of police involvement in the alleged conspiracy of the mob rang the death knell to the storeowners' § 1986 claim.[115]

III. SECTION 1985(3) CONSPIRACIES TO HINDER LAW ENFORCEMENT

The above discussion involves the deprivation clause of § 1985(3). In a footnote, the Eleventh Circuit in *Park* noted that:

> [A]s [the storeowners] have declined to make the necessary assertions, we decline to consider the second clause of the statute, which addresses conspiracies aimed at "preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws."[116]

Even if the storeowners had set forth a claim that the mob conspired in violation of the "hindrance clause" of § 1985(3), current caselaw would mandate its dismissal for the same reasons the deprivation clause claim cannot succeed.

According to the majority of the Supreme Court in *Bray*, both extra-textual elements that apply to deprivation clause claims also apply to hindrance clause claims.[117] Recalling the Court's earlier statements in *Griffin*, which noted that because "the source of the animus requirement is `[t]he [statutory] language requiring intent to deprive of equal protection, or equal privileges and immunities,'" which language is also present in the hindrance clause, the *Bray* majority was of the opinion that the animus requirement applies to both clauses.[118] More important to the *Park* scenario, the *Bray* majority suggests that the *Carpenters* requirement that a private conspiracy is covered by the deprivation clause of § 1985(3) only if it targets a right guaranteed against private encroachment should also

114. *See id*. at 912.
115. *See* Park v. City of Atlanta, 120 F.3d 1157, 1160–61 (11th Cir. 1997).
116. *Id*. at 1161 n.5 (quoting 42 U.S.C. § 1985(3) (1994)).
117. *See* Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 279–83 (1993).
118. *Id*. at 281 & n.13.

apply to the hindrance clause, again because the operative "equal protection" language is found in both clauses.[119] The *Bray* majority explained that a private conspiracy must be aimed at a right guaranteed against private impairment:

> Trespassing upon private property is unlawful in all States, as is, in many States and localities, intentionally obstructing the entrance to private premises. These offenses may be prosecuted criminally under state law, and may also be the basis for state civil damages. They do not, however, give rise to a federal cause of action simply because their objective is to prevent the performance of abortions, any more than they do so (as we have held [in *Carpenters*]) when their objective is to stifle free speech.[120]

While the entire discussion regarding the hindrance clause constitutes dictum, and the Court did not emphatically endorse a determination that the private encroachment prong applies to the hindrance clause but instead, merely criticized the dissenters for their contrary conclusion,[121] it is clear that, in 1993, the Court leaned toward application of both requirements.

Since *Bray*, however, Justice White resigned, leaving "four justices [who] have indicated in dictum that the hindrance clause should be interpreted with the same restrictions as the deprivation clause and four justices interpret the hindrance clause more broad-

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119. *See id*. at 282–83.

120. *Id*. at 286. As only the Fourteenth Amendment was raised in the Amended Complaint, the only constitutional rights the rioters in *Park* could have been targeting were the storeowners' rights not to be deprived of property or liberty without due process of law. As discussed above, the Fourteenth Amendment requires state action, which was not present in *Park*. *See supra* text accompanying note 77. The only other right arguably implicated by the facts in *Park*, though not raised in the Amended Complaint, would be the Fourth Amendment. The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV. The *Bray* Court recognized in dicta that the Fourth Amendment does not apply to private conduct. *See* 506 U.S. at 278. The text of the Fourth Amendment further supports this conclusion, as only the government issues and executes warrants.

121. *See Bray*, 506 U.S. at 279–83.

ly."[122] In 1994, the balance became more precarious, when Justice Blackmun, one of the dissenters, retired.[123] Of course, it is unknown how Justices Ginsburg and Breyer would rule on this issue. Thus, lower courts have struggled to interpret the hindrance clause, without the benefit of much guidance, in the context of abortion protest cases.

Relying on the dictum in *Bray*, the First Circuit held that the animus requirement articulated in *Griffin* applies to the hindrance clause as well as to the deprivation clause.[124] With regard to the second extra-textual element applicable to deprivation clause cases, the court concluded that "claims brought under the hindrance clause of § 1985(3) do not require that the right allegedly infringed be one guaranteed against private encroachment, but need only be one guaranteed against official encroachment."[125] In support of this conclusion, the First Circuit explained that "[t]he hindrance clause, unlike the deprivation clause, implicates the ability of the State to ensure and safeguard rights protected against any infringement."[126] The court cautioned, however, that its conclusion does not mean

> that any action which delays, impedes or hinders law enforcement officials is actionable under the hindrance clause. The right infringed as a result of the conspiracy must be constitutionally protected or guaranteed, and the *purpose*, not merely the *effect*, of the conspiracy, must be to impede state officials in their efforts to secure equal protection of the laws.[127]

The Ninth Circuit disagreed with the *Bray* majority's concern that the class and constitutional right restrictions placed upon the

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122. National Abortions Fed'n v. Operation Rescue, 8 F.3d 680, 683 (9th Cir. 1993). In *Bray*, Justice Scalia delivered the opinion of the Court, in which Chief Justice Rehnquist and Justices White, Kennedy, and Thomas joined. *See* 506 U.S. at 266. Justice Kennedy filed a concurring opinion, and Justice Souter filed an opinion concurring in the judgment in part and dissenting in part. *See id*. at 287–88. There were two dissenting opinions, one by Justice Stevens, and one by Justice O'Connor; Justice Blackmun joined in both dissents. *See id*. at 307, 345.

123. *See Justice Blackmun's Decision*, WASH. POST, Apr. 7, 1994, at A26.

124. *See* Libertad v. Welch, 53 F.3d 428, 448 (1st Cir. 1995). The First Circuit also held that "women are a protected class falling within the ambit of the protections afforded by § 1985(3)." *Id*. at 449.

125. *Id*. at 450.

126. *Id*.

127. *Id*.

deprivation clause of § 1985(3) ought also to be imposed on the hindrance clause, explaining that "[t]he fact that the hindrance clause applies only to conspiracies to hinder state officials raises no specter of federalizing general tort laws."[128] This court concluded that the hindrance clause is sufficiently narrow in that because it provides a cause of action "only where the purposeful hindering of the police was directed at a protected class exercising a constitutional right," "ordinary trespasses or torts would not qualify."[129] In distinguishing the two clauses, the court further defined the constitutional right protected by the hindrance clause: "With the hindrance clause being directed at thwarting state law enforcement from protecting activities the deprivation clause leaves for state law enforcement, there is reasonable justification for covering at least all constitutional rights and activities exclusively engaged in by a protected class."[130]

In his *Bray* dissent, Justice Souter argued that the terms of the hindrance clause, to prevent or hinder officials in the discharge of the state's police power, is tantamount to state action, and the clause therefore "may be applied to a conspiracy intended to hobble or overwhelm the capacity of duly constituted state police authorities to secure equal protection of the laws . . . even when the ultimate object of the conspiracy is to violate a constitutional guarantee that applies solely against state action."[131] Notwithstanding the logic of this argument, it is nonetheless clear that the hindrance clause requires that the purpose of the alleged conspiracy be to prevent or hinder law enforcement officers.[132] While this issue was not presented to either the district court or the circuit court in *Park*, there is no evidence that prevention of police protection was the mob's purpose in attacking the storeowners' businesses and not merely the effect.[133]

IV. CONCLUSION

128. National Abortions Fed'n v. Operation Rescue, 8 F.3d 680, 685 (9th Cir. 1993).
129. *Id*.
130. *Id*. at 685–86.
131. *Bray*, 506 U.S. at 301–03 (Souter, J., concurring in the judgment in part and dissenting in part).
132. *See id*. at 284.
133. *Cf*. Libertad v. Welch, 53 F.3d 428, 450 (1st Cir. 1995).

But for the clarification that one need not participate in the § 1985(3) conspiracy to be held liable under § 1986, the status of the law regarding the Ku Klux Klan Act remains unclear after *Park*. The Eleventh Circuit failed to address several legal issues, but instead remanded the case to the district court without much guidance. Confusion regarding the interfacing of the elements of § 1985(3), the provisions of the Thirteenth Amendment, and the meaning of the phrase "equal protection" exists among some lower courts. While the court cautioned that "judicious care" must be taken to avoid interpreting § 1985(3) as a general tort law,[134] the court declined to discuss whether state action was required in this situation. Clearly, the facts in *Park* require state action; absent such a requirement, § 1985(3) becomes a general federal tort law.

134. Park v. City of Atlanta, 120 F.3d 1157, 1162 (11th Cir. 1997).