COULD THE DOOR BE CLOSING ON THE NOTORIOUS "BEYOND AUTHORITY" EXCEPTION TO CRANMAN IMMUNITY IN ALABAMA?

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I. Introduction

Lawyers who regularly represent public entities, officials and employees in the State of Alabama will be familiar with the law of what this article will refer to as "public employee immunity." In Alabama, this doctrine is also known as "state-agent immunity" and "discretionary function immunity," but most now refer to it as "Cranman immunity."[1] The varying appellations affixed to the public employee immunity doctrine in this State – which grant immunity to public employees sued in their individual capacity for actions taken in the line and scope of their employment – exist in large part due to fundamental disagreements about and the evolving nature of public employee immunity itself in Alabama.[2] In recent years, Justice Glenn Murdock has invited the Court to re-examine its public employee immunity jurisprudence, with an eye to correcting one aspect of the Supreme Court's decision in Ex parte Cranman that he believes is being overly applied to the great detriment of public employees.

Justice Murdock's concerns about the manner in which public employee immunity is being applied centers on the so-called "beyond authority" exception recognized in Cranman. Under that exception, a public employee who is otherwise entitled to immunity from suit loses that immunity in the event the employee is found to have acted "beyond his or her authority."[3] Plaintiffs' lawyers have seized on this exception to the Cranman immunity formulation to argue – with great success, as it turns out – that any time a public employee acts contrary to rules, regulations, or detailed checklists, the employee has acted "beyond his or her authority" and is subject to suit in the same manner as any other individual.[4]

Justice Murdock, however, has begun to question the correctness of this so-called exception to public employee immunity, arguing that its very presence in the case law often renders the immunity defense "'an untenable tautology.'"[5] As Justice Murdock sees the matter, the Supreme Court's "interpretation of the 'beyond authority' exception inevitably collapses the immunity determination into the determination of whether the State employee has committed a tort or any other wrong actionable under state or federal law."[6] After several concurring opinions in which Justice Murdock wrote separately to underscore his doubts about the current framework, he finally found himself penning the majority opinion this past year in Kendrick v. City of Midfield.[7] While Justice Murdock's comments in Kendrick were limited to the observation that the parties to that appeal had not asked "the Court to reevaluate its jurisprudence concerning the 'beyond authority' exception," the mere fact that this statement ended up in the majority opinion can be seen as an indication that the Court may be inviting reconsideration of the matter.

If the entire Court is willing to reconsider the "beyond authority" exception, this certainly should be welcome news to members of the defense bar who handle these cases on a regular basis. Reconsideration of the "beyond authority" exception would almost certainly expand the current public employee immunity protections. What is more, while immunity has always been an important tool in defending public employees, the defense has taken on new significance in the wake of several Supreme Court decisions which, read together, eliminate any arguments that individual employees benefit from state statutes establishing damages caps in claims against municipalities.

The remainder of this article examines and evaluates the relative strength of Cranman immunity in the wake of these decisions by the Supreme Court exposing individual employees to large damages awards for conduct arising during the course of their employment. The fruits of this examination are clear: it is not a good time to be a public employee in the State of Alabama. There is a significant risk under current law that modestly-paid public employees – who have benefitted from some form of immunity protection at least since the Destafney v. University of Alabama decision[8] – could now find themselves personally liable for unlimited damages awards for making simple mistakes in the course of their employment. What is worse, there is now a growing disincentive for municipalities and other governmental entities to create detailed rules, regulations, and standard operating procedures to give guidance to their employees, because the current law of immunity treats a violation of these standards as dispositive of the immunity question:

if a rule is broken, however innocently, the employee is not immune.

II. Overview of the Status of Municipal Damages Caps in Alabama

Before burrowing into the minutiae of public employee immunity itself, it is important to set the stage by illustrating the stakes at play in the current debate over exceptions to that immunity. In doing so, it should be noted that while the term "state agent" immunity is often still utilized, public employee immunity in the State of Alabama directly benefits employees of county and municipal governments and other governmental entities, including police officers.[9]

There are two Alabama statutory caps on damages applicable to actions against municipalities and other local governmental entities. They are both in the amount of $100,000 (for a single person, $300,000 for multiple claimants) and are found in Ala. Code §§ 11-93-2 and 11-47-190. It was previously assumed by many defense lawyers that at least the statutory cap contained at § 11-93-2 applied to individual employees of counties and municipalities. This assumption was predicated upon a reading of the statute but also upon the Supreme Court's decision in Smitherman v. Marshall County Comm'n, in which the Supreme Court upheld the damages cap as applied to *official capacity* claims against certain county employees.[10] Defense lawyers likewise felt somewhat confident that the separate cap provided for at § 11-47-190 applied to individual employees. After all, the statute itself provides that no recovery may be had "against a municipality, *and/or any officer or officers, or employee or employees, or agents thereof*," in excess of the limits set out in the statute, "the limits set out in the provisions of § 11-93-2 notwithstanding."[11]

These understandings were of critical importance in successfully defending and settling personal injury litigation in the State of Alabama, if not to the operation of local government itself. The caps, similar to those in other States, allowed many local governments the ability to self-insure, allowed others to easily obtain insurance on the open market, and were at least believed to assist in recruitment and retention of employees. However, in Suttles v. Roy, the Alabama Supreme Court held that an individual capacity claim alleged against a public officer or employee is not subject to the $100,000 statutory cap on damages contained in § 11-93-2 — even where the officer or employee is acting within the line and scope of his or her duties at the time of the occurrence of the matters at issue.[12] After Roy, the Supreme Court decided two follow-on cases concerning whether the damages cap located within § 11-47-190 applied to individuals.

The Court first held in Morrow v. Caldwell that the damages cap found at § 11-47-190 does not apply to an individual claim against a municipal employee, at least where the claims fall within the "willful or wanton" exception to the doctrine of state-agent immunity that is discussed later in this article.[13] Several months later, the Court held in Ala. Mun. Ins. Corp. v. Allen that "[t]he $100,000 statutory cap of § 11-47-190 does not apply when a peace officer, acting outside his employment, is sued in his individual capacity."[14]

If there were initial questions as to how plaintiffs' lawyers might change their litigation strategies in response to these decisions, those questions have clearly been answered now. It took the plaintiffs' bar no time at all to realize that the damages caps are entirely irrelevant if they are permitted to simply focus their claims against individual employees – all of whom are, as a matter of practice and to some extent by statute, covered by the insurance policies purchased by local governments. And so, public employees in the State of Alabama have been under assault from the plaintiffs' bar ever since the Alabama Supreme Court ruled in these three cases that the damages caps applicable to public entities are inapplicable to public employees. Lawyers defending public entities and employees have seen a surge of litigation against such employees – claims expressly intended to circumvent the damages caps.

In the face of this serious uptick in individual public employee claims, there is only one remaining defense, and that is the defense of immunity.

III. The Development of Public Employee Immunity in Alabama

Prior to the Supreme Court's decision in Ex parte Cranman, the Alabama Supreme Court had touched on the topic of public employee immunity on several occasions, dating back to at least 1875.[15] For the most part, the Court rejected or ignored the public employee immunity doctrine until Destafney v. University of Alabama. In that case, while not applying the doctrine based upon the facts at bar, the Supreme Court sketched out a basis for and a loose formulation of it grounded in the Restatement (2d) of Torts, § 895D.[16]

Section 895D of the Restatement explained (and still

explains) public employee immunity in these terms:

(1) Except as provided in this Section a public officer is not immune from tort liability.

(2) A public officer acting within the general scope of his authority is immune from tort liability for an act or omission involving the exercise of a judicial or legislative function.

(3) A public officer acting within the general scope of his authority is not subject to tort liability for an administrative act or omission if

(a) he is immune because engaged in the exercise of a discretionary function,

(b) he is privileged and does not exceed or abuse the privilege, or

(c) his conduct was not tortious because he was not negligent in the performance of his responsibility.[17]

The Court in Destafney opined that "[g]enerally speaking, our own case law development accords with the Restatement's Comment to this Section,"[18] which states that:

> The origin of the immunity of public officers and employees is found in that of the king (see § 895A, Comment a), which was extended to protect the servants who were carrying out his commands. The development of the parliamentary system in England gradually substituted the idea that, while the king himself could not be charged with wrongdoing, his ministers were personally responsible when they acted illegally. The rules on immunity from liability in tort that were finally worked out by the common law were essentially a compromise between these two positions.[19]

With this basic understanding of the general common law doctrine of discretionary function immunity, the Alabama Supreme Court in Destafney ushered in a new era in Alabama public employee litigation, even though the Court stated that under the facts before it, "no valid public policy will be served by immunizing from liability a public employee whose tortious conduct results in personal injury to another."[20]

In the nineteen years that passed following Destafney, the public employee immunity doctrine in Alabama was applied in numerous cases and often focused on whether the conduct at issue constituted the performance of "discretionary" tasks or "ministerial" functions.[21] In 2000, unhappy with a series of what were regarded as inconsistent opinions and arguably confusing interpretations of the term "discretionary function," a plurality of the Court set out to re-formulate public employee immunity in the State of Alabama.[22]

The Cranman plurality's reformed statement of public employee immunity – which was adopted by the entire Court in Ex parte Butts[23] – is as follows:

> A State agent *shall* be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's

(1) formulating plans, policies, or designs; or

(2) exercising his or her judgment in the administration of a department or agency of government, including, but not limited to, examples such as:

(a) making administrative adjudications;

(b) allocating resources;

(c) negotiating contracts;

(d) hiring, firing, transferring, assigning, or supervising personnel; or

(3) discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule, or regulation prescribes the manner for performing the duties and the State agent performs the duties in that manner; or

(4) exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, law-enforcement officers' arresting or attempting to arrest persons; or

(5) exercising judgment in the discharge of duties imposed by statute, rule, or regulation in releasing prisoners, counseling or releasing persons of unsound mind, or educating students.

Notwithstanding anything to the contrary in the foregoing statement of the rule, a State agent shall not be immune from civil liability in his or her personal capacity

(1) when the Constitution or laws of the United States, or the Constitution of this State, or laws, rules, or regulations of this State enacted or promulgated for the purpose of

regulating the activities of a governmental agency require otherwise; or

(2) when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law.[24]

It is not entirely clear where the plurality obtained the majority of the language for this almost statutory proclamation. Other than a portion of the opinion arguing that the Restatement test is unworkable,[25] the plurality opinion does not expressly attribute the language of its own restatement to any particular opinion or source, nor does it even explain the reasoning for the language chosen. One thing is clear from the plurality's opinion, however. Unlike the Court in Destafney – which had gone to great lengths to contrast the constitutional immunity of the State under Art. I, § 14 with the common law immunity of public employees – the plurality in Cranman felt compelled to source the public employee immunity in § 14 and the principle of separation of powers embedded in the Alabama Constitution of 1901.[26]

Whatever the wisdom of the plurality's decision to draw its public immunity doctrine from the Alabama Constitution of 1901, a deep examination of the older § 14 cases involving equitable suits against individual employees actually reveals the origin of the exceptions to immunity, including the "beyond authority" exception which is currently in Justice Murdock's crosshairs. The "beyond authority" exception – like the other exceptions – is not to be found in the express language of § 895D of the Restatement. Nor does it have a perfectly direct analogue in the case law interpreting that Section, though there is some kinship to be found. In fact, the "beyond authority" exception was evidently taken from early twentieth century decisions in which citizens had tried to work an end-run around the State's constitutional immunity from suit by suing individual State officers in their official capacities. In such cases, the Supreme Court developed a rule that the State's § 14 immunity was not violated "when officers under a mistaken interpretation of the law acting in the name of the State commit acts not within their authority which are injurious to the rights of others."[27] Such language, of course, is very similar to that used by the plurality in Cranman to determine the totally separate question of whether employees should be personally liable for damages for actions taken in the course of their employment.

For example, in the 1961 case of St. Clair County v. Town of Riverside, the Supreme Court adjudicated a dispute between a town and the state highway director, against whom the Town sought an injunction prohibiting him from shutting down an existing highway.[28] Deciding the question whether the Town could sue the Director in his official capacity seeking such equitable relief, the Court declared that "[i]njunctive action may be maintained against a state official, if the official is acting beyond the scope of his authority or acting illegally, in bad faith, or fraudulently."[29] The Court in St. Clair County relied upon an earlier and now-discredited decision in Finnel v. Pitts,[30] and also went on to cite a section of the American Jurisprudence legal encyclopedia for the proposition that: "Nor does the immunity of the state from suit relieve an officer of the state from responsibility when he acts tortiously on the rights of an individual, or in excess or violation of his authority, even though he acts or assumes to act under the authority and pursuant to the directions of the state."[31]

This statement, which constitutes nothing more than *dicta* in the context of the St. Clair County opinion, seems consistent with the Cranman plurality's understanding of the law of public employee immunity. The problem, though, is that this statement from St. Clair County is essentially a declaration of the basic law of *agency*, as articulated in Finnell, and is not at all in accordance with the contemporary understanding of the law of *immunity*.[32]

As the Supreme Court later held in Taylor v. Shoemaker, "[t]he holding by a majority of this Court in Finnell v. Pitts [*i.e.*, that an agent is not excused from personal liability for a tort which he commits for and in the name of his principal, whether the principal is liable to suit or not] should be read in light of later cases decided by this Court involving the immunity of public officers."[33] According to the Court in Taylor, "[t]he law of this State [as of 1992 was] that there is immunity when the state officer or employee has not exceeded his or her authority, but has merely negligently performed a statutory duty while acting pursuant to statutory authority."[34]

This statement of the law in Taylor is much more consistent with the contemporary understanding of an immunity defense, which applies only if the employee was performing his or her job functions within the parameters of his or her authority, but largely *regardless* of whether the employee acted negligently in performing those duties. This statement also closely resembles Comment g to §

895D of the Restatement (2d) of Torts. That Comment provides as follows:

> An immunity protects an officer only to the extent that he is acting in the general scope of his official authority. When he goes entirely beyond it and does an act that is not permitted at all by that duty, he is not acting in his capacity as a public officer or employee and he has no more immunity than a private citizen. It is as if a police officer of one state makes an arrest in another state where he has no authority.[35]

In stark contrast to the Restatement understanding of the concept of "beyond authority," which is akin to asking whether a judicial official loses absolute immunity by acting in the absence of all jurisdiction, the Alabama Supreme Court under Cranman has repeatedly held public employees liable for the precise sorts of mistakes in judgment that normally would be found to fall within the protection of immunity. In a very real sense, the Supreme Court has conflated the question of liability (i.e., was the employee negligent) with the question of immunity.

In analyzing the "beyond authority" exception, the Alabama Supreme Court does make an effort to distinguish between guidelines, on the one hand, and detailed rules and regulations, on the other.[36] The failure to follow policies that constitute guidelines does not deprive a state actor of State-agent immunity because, ostensibly, following guidelines requires the exercise of discretion and judgment.[37] However, the Court regards a failure to follow detailed rules and regulations not simply as the standard of care for the underlying tort, but also as a waiver of the immunity protections normally afforded to public employees.[38]

IV. Justice Murdock's View

Beginning with his partial concurrence in Ex parte Coleman, Justice Murdock has been asking the Court to reconsider its understanding of the "beyond authority" exception.[39] In Watson, Justice Murdock expressed the "fear that the manner in which this Court has begun to apply the 'beyond authority' exception to State-agent immunity does not allow for the drawing on a principled basis of a line that prevents this exception (which increasingly is the subject of our State-agent-immunity cases) from becoming an exception that swallows the rule."[40] Turning his observations into a useful example, Justice Murdock wondered if merely violating a rule gives rise to tort liability and works a waiver of immunity:

> Would we not be obliged to say that an employee told by his or her supervisor always to refrain from any tortious conduct vis-à-vis third parties will be acting beyond the employee's authority whenever he or she does otherwise? Indeed, a directive from a supervisor to this effect would not even be necessary because, in this sense, an employee never has the authority to act tortiously toward others.[41]

Justice Murdock's concerns were presaged by former Justice Gorman Houston in 2002. In Telfare v. City of Huntsville, Justice Houston dissented from an opinion in which the majority found that a defendant police officer was not entitled to Cranman immunity because he did not have probable cause to make the arrest.[42] The majority had held that the officer was not acting within the scope of his discretionary authority because he had made the arrest without probable cause.[43] Justice Houston expressed his view that this was contrary to how Cranman immunity was to be analyzed and that the entitlement to immunity should not be determined simply by whether the governmental actor had committed a tort:

> If the doctrine of discretionary authority in a case involving an alleged illegal arrest is coextensive with, and determined by, the question of whether the officers effectuating the arrest had probable cause to arrest, then the issue of immunity would never come into play – the liability of the officer, and, thus, what immunity he enjoys, would simply be conclusively determined by whether the officer had committed a tort by arresting without probable cause.[44]

In later opinions, Justice Murdock has begun to turn to the law of qualified immunity as interpreted by the federal courts to convey his point. Federal courts require, as a condition precedent to invoking a qualified immunity defense, that the public official establish that he or she "was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred."[45] Just as the Restatement suggests, "[t]o determine whether an official was engaged in a discretionary function, [federal courts] consider whether the acts the official undertook are of a type that fell within the employee's job responsibilities."[46]

Once an answer is supplied to this important preliminary inquiry – which serves to ensure that the federal employee is not receiving immunity for purely personal endeavors – the federal courts do not then *re-ask* the very same question, but instead move on to determine whether the employee

acted as a reasonable federal employee would have under the circumstances. Similarly, federal courts do not conclude that merely because an employee acted unconstitutionally the employee automatically acted outside the scope of his or her authority.[47] Such an exercise would merely become "an untenable tautology" – i.e., it would equate underlying tort liability with immunity, meaning that the alleged immunity defense is purely illusory.

Taking this lead, Justice Murdock argues that the Supreme Court's current interpretation of the "beyond authority" exception inevitably collapses the immunity determination into the very basic determination of whether the State employee has committed a tort or any other wrong actionable under state or federal law.[48] Having resolved that question under the guise of resolving the immunity defense, the Court has simply wasted pages of an opinion on the false suggestion that immunity has been considered.

It is critical to note that aligning Alabama's public employee immunity exceptions with the Restatement and with federal law would not mean that citizens would be deprived of their ability to effectively contest adverse actions by public employees. Indeed, at the federal level, qualified immunity has not proven to be a complete bar to liability – far from it. And Justice Murdock has hinted he would be open to continuing with the other exceptions to immunity, namely for actions taken in bad faith; and he would perhaps be open to a new exception for wanton conduct.

As he wrote in Ex parte Watson, "[i]n a given case, it may be that the employee has acted in bad faith in not following an applicable directive (and as a result falls within the bad-faith exception to State-agent immunity) or perhaps has acted wantonly (though Alabama has not recognized an exception to State-agent immunity for wanton conduct)."[49] Such an understanding of the immunity rule would certainly bring Alabama law more in line with the federal common law of qualified immunity, under which federal government employees are exempt from liability unless their actions are "so obviously wrong, in light of preexisting law, that only a plainly incompetent official or one who was knowingly violating the law would have done such a thing."[50]

V. A Call to Action

It is not clear at the present time whether Justice Murdock's view has garnered any support on the Supreme Court. Certainly, the Supreme Court's decision in Cranman was controversial at the time, but seventeen years have now passed. Defense lawyers can hope that the endless litigation over rules and checklists in this time period has played some role in persuading the justices that the current immunity calculus is less than perfect. Not only are the distinctions between policies and "checklists" somewhat arbitrary at times, the policy the Court is encouraging in continuing with this exception is one of deregulation: cities and other local government entities have surely by now received the message that the fewer the policies, the better chance of avoiding employee liability, and the better chance of obtaining peace officer immunity under Ala. Code § 6-5-338(b).

A decision to transform the "beyond authority" exception into the preliminary screening tool envisioned by § 895D of the Restatement and applied by the federal courts in the parallel context of qualified immunity would restore the ability of local governments to enact salutary rules and regulations that would lead to increased employee performance and safety, while also restoring the fundamental purpose of the immunity doctrine. And, if Justice Murdock's offer to consider increased application of the "bad faith" exception and a new "wanton" exception were to be accepted, litigation could be more focused on whether the employee intentionally violated the law, an appropriate basis for denying immunity.

If any of this is to come to pass, however, it is up to us to get the issue before the Supreme Court. It will take care and patience to find the right case to present the issue, but practitioners should be on the lookout for the right facts while Justice Murdock continues to sit on the bench.

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1 See Ex parte Cranman, 792 So.2d 392 (Ala. 2000).

2 The term "State-agent immunity," as it evolved from the case law, was intended to convey the idea that State employees benefit from the penumbra of constitutional immunity conferred upon the State itself by Art. I, § 14 of the Alabama Constitution of 1901. See Destafney v. University of Alabama, 413 So.2d 391, 392 (Ala. 1981) (recognizing that where a public employee acts

on behalf of the State and effectively carries out the State's policy, the suit is effectively against the State rather than the individual, and the State is immune). In contrast, the term "discretionary function immunity," also used in the Destafney opinion, derives from the Restatement (2d) of Torts § 895D. And, as most readers will understand, "Cranman immunity" refers to the Supreme Court's 2000 plurality decision, in which the Court attempted to meld together the two different immunity doctrines into a single, statute-like "restatement," while holding that the actual source of the doctrine lies in § 14. (There also exists a related immunity, "peace officer immunity," which is a creature of statute and which is now interpreted in the manner provided for by Cranman. See Ala. Code § 6-5-338; Moore v. Crocker, 852 So.2d 89, 90 (Ala. 2002)).

3 Cranman, 792 So.2d at 405.

4 See, e.g., Gowens v. Tys. S. ex rel. Davis, 948 So.2d 513, 524 (Ala. 2006) ("In cases applying the Cranman rule, this Court has held what was clearly implied in Cranman, namely, that a State agent acts beyond authority and is therefore not immune when he or she fail[s] to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist.") (internal quotations and citations omitted) (emphasis in original).

5 L.N. v. Monroe County Board of Education, 141 So.3d 466, 473 (Ala.2013) (Murdock, J., concurring specially) (quoting Holloman v. Harland, 370 F.3d 1252 (11th Cir. 2004)).

6 Ex parte Coleman, 145 So.3d 751, 761 (Ala. 2013) (Murdock, J., concurring in the result).

7 2016 WL 1554139 (Ala. Apr. 15, 2016).

8 413 So.2d 391 (Ala. 1981).

9 See City of Birmingham v. Brown, 969 So.2d 910, 916 (Ala. 2007) ("Immunity applies to employees of municipalities in the same manner that immunity applies to employees of the State. Ex parte Cranman, supra, did nothing to alter this application."). The Supreme Court has held that Cranman also provides the appropriate methodology for determining immunity under Ala. Code § 6-5-338, which "by its terms, extends state-agent immunity to peace officers performing discretionary functions within the line and scope of their law-enforcement duties." Moore v. Crocker, 852 So.2d 89, 90 (Ala. 2002).

10 746 So.2d 1001, 1007 (Ala. 1999). The Smitherman Court noted that individual capacity claims against County commissioners and the County engineer were unavailable under controlling law. See id. at 1004.

11 Ala. Code § 11-47-190.

12 75 So.3d 90 (Ala. 2010)

13 153 So.3d 764, 770-71 (Ala. 2014)

14 164 So.3d 568, 579 (Ala. 2014)

15 State v. Hill, 54 Ala. 67 (Ala. 1875); see also Elmore v. Fields, 153 Ala. 345, 45 So. 66 (Ala. 1907); Finnell v. Pitts, 222 Ala. 290, 132 So.2 (Ala. 1930).

16 413 So.2d 391, 394 (Ala. 1981).

17 Restatement (2d) of Torts § 895D.

18 413 So.2d at 393-94.

19 Id. at Comment (a).

20 413 So.2d at 396.

21 See, e.g, Defoor v. Evesque, 694 So.2d 1302 (Ala. 1997); Town of Loxley v. Coleman, 720 So.2d 907 (Ala. 1998).

22 Cranman, 792 So.2d at 405.

23 775 So.2d 173, 178 (Ala. 2000)

24 Cranman, 792 So.2d at 405 (emphasis in original). This formulation was modified in part by the Court in Hollis v. City of Brighton, 950 So.2d 300, 309 (Ala. 2006) to take account of the language of Ala. Code § 6-5-338, providing for peace officer immunity. The restatement of the law of public employee immunity as modified in Hollis now also governs the determination of whether a peace officer is entitled to immunity under Ala. Code § 6-5-338(a). Ex parte City of Tuskegee, 932 So.3d 895, 904 (Ala. 2005).

25 Cranman, 792 So.2d at 404.

26 Id. at 401.

27 Curry v. Woodstock Slag Corp., 242 Ala. 379, 381, 6 So.2d 479, 481 (Ala. 1942) (citing Finnell, 222 Ala. at 290.)

28 272 Ala. 294, 296 128 So.2d 333 (Ala. 1961).

29 Id.

30 222 Ala. 290, 132 So.2 (1930).

31 Id. at 333-34 (citation omitted); see also, e.g., Unzicker v. State, 346 So.2d 931, 933 (Ala. 1977) (permitting suit against individual state officials in their "representative capacity" for unlawful taking based upon allegations that they acted "fraudulently, in bad faith, beyond their authority, or acted under a mistaken interpretation of the law").

32 Finnell, 222 Ala. at 290 (holding that "the rule is universal that an agent is not excused from personal liability for a tort which he commits for and in the name of his principal, whether the principal is liable to suit or not").

33 605 So.2d 828, 830 (Ala. 1992).

34 Id.

35 Restatement (2d) Torts 895D comment *g*.

36 See, e.g., Ex parte Brown, 182 So.3d 495, 505-06 (Ala. 2015) Giambrone v. Douglas, 874 So.2d 1046, 1052 (Ala. 2003); Ex parte Spivey, 846 So.2d at 332-33 (Ala. 2002).

37 See Brown, 182 So.3d at 506 (holding that police officer did not lose immunity for failing to follow official policy on when to engage in pursuit of suspect because under these policies "a significant degree of discretion is left to the officer in the exercise of those duties."); Spivey, 846 So.2d at 332-33 (holding that failure of teacher to follow school policy on safety of shop equipment did not deprive teacher of immunity because the policy did "not remove from [the teacher] his judgment in determining the safe operation of the tools or when a safety hazard exists. These are not the type of 'detailed rules or regulations' that would remove a State agent's judgment in the performance of required acts.") (citation omitted).

38 See Giambrone, 874 So.2d at 1055 (holding that policy on wrestling techniques "provided specific instructions regarding the proper techniques to be used in coaching the sport of wrestling" and that these detailed rules "removed [the wrestling coach's] judgment in determining whether he should participate in a 'full speed' challenge match with a student who was less experienced, much younger, and smaller than [the coach].") (emphasis added).

39 145 So.3d 751 (Ala. 2009) (Murdock, J., concurring in part and dissenting in part).

40 Ex parte Watson, 37 So.3d 752, 766 (Ala. 2009) (Murdock, concurring in part and dissenting in part).

41 Id.

42 841 So.2d at 1230.

43 Id. at 1229.

44 Id. at 1230.

45 Lee v. Ferraro, 284 F.3d 1188, 1194 (11th Cir. 2002) (internal quotations and citations omitted).

46 Crosby v. Monroe County, 394 F.3d 1328, 1332 (11th Cir. 2004) (emphasis supplied); see also O'Rourke v. Hayes, 378 F.3d 1201, 1205-06 (11th Cir. 2004) ("[T]he fact that [an officer] may have conducted his investigation in an unconstitutional manner does not undermine [the fact that performing the investigation in the first place is a legitimate function of a law enforcement officer].").

47 Harbert Int'l, Inc. v. James, 157 F.3d 1271, 1282 (11th Cir.1998).

48 Ex parte Coleman, 145 So.3d 751, 761 (Ala. 2013) (Murdock, J., concurring in the result).

49 Ex parte Watson, 37 So.3d 752, 766 (Ala. 2009).

50 Denno v. School Bd. of Volusia County, 218 F.3d 1267, 1272 (11th Cir. 2000).