THE EXCLUSION OF EVIDENCE IN CONFLICTS OF CRIMINAL PROCEDURE

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INTRODUCTION

Imagine that a criminal suspect, indicted by the state of New York on a murder charge, flees to Houston, Texas. The suspect's freedom is short-lived; he is quickly recognized and arrested by Texas State Police for the out-of-state warrant. A New York State Police investigator then travels to Texas to take the defendant's statement — not an unusual occurrence. Texas criminal procedure requires investigators to inform criminal defendants of their right to end the interview at any time before the investigator begins the interview. Texas law also requires such interviews to be electronically recorded. However, this investigator is from New York, and New York Criminal procedure does not require either of these acts; predictably, the investigator fails to do either of them. The defendant is later tried in New York and convicted of murder. However, he appeals, arguing that the statement he made in Texas was inadmissible because the investigator failed to follow the procedures that Texas requires. How should the court rule? Should New York law or Texas law apply?

The aforementioned situation is the exact fact pattern of *People v. Benson*, a seminal New York state case that exemplifies a conflict of criminal laws.[1] Though the legal fields of Conflict of Laws and Criminal Law generally do not intersect,[2] when they do, the question frequently at issue is whether evidence that is gathered properly under the rules of

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1. People v. Benson, 454 N.Y.S.2d 155, 156 (App. Div. 1982).

2. John Bernie Corr, *Criminal Procedure and the Conflict of Laws*, 73 GEO. L. J. 1217, 1217 (1985).

one state but not of the other should be barred by the exclusionary rule.[3] This Essay argues that New York courts have resolved this issue inconsistently: cases involving the same issues have resulted in opposite outcomes. Moreover, the courts' opinions are often underexplained, with over-reliance on precedent and general principles rather than comprehensively analyzing the issues. Identifying and understanding this defect can inform future decision-makers on how to improve the clarity, consistency, and fairness of the criminal justice system going forward. The paper concludes by proposing an alternative rule—applying the law of the state whose law enforcement acted against the defendant.

PART I: CONFLICT OF LAWS AND INTEREST ANALYSIS: A (SIMPLIFIED) OVERVIEW

Conflict of Laws (also known as Choice of Law or Private International Law) is the legal field that attempts to resolve issues that arise when the respective laws of multiple sovereign bodies are implicated in a single case, like the opening illustration.[4] Though a consensus has not been established regarding the best or correct approach towards resolving such conflicts, two approaches dominate. The first is the traditional, territorial approach, enshrined in the First Restatement of Conflict of Laws. This approach instructs the court to apply the law of the place of the accident; thus, in the illustration above, the court would apply New York law.[5]

But in *Babcock v. Jackson*, a seminal New York case in Conflict of Laws, the Court of Appeals of New York rejected the territorial approach due to the "[r]ealization of the unjust and anomalous results which may ensure from application of the traditional rule."[6] Instead, New York now employs interest analysis, the Conflict of Laws approach favored in modernity.[7] Interest analysis's basic tenant is

3. *Id.* at 1220.

4. For simplicity, the hypotheticals and cases referenced in this Essay will generally involve conflicts between two states.

5. Friedrich K. Juenger, *Conflict of Laws: A Critique of Interest Analysis*, 32 AM. J. COMPAR. L. 1, 2 (1984).

6. Babcock v. Jackson, 191 N.E.2d 279, 283 (N.Y. 1963).

7. People v. Douglas, 472 N.Y.S.2d 815, 821 (Sup. Ct. 1984) (citations omitted) ("In both civil law and criminal law, New York has adopted an 'interest analysis' approach

> to give 'controlling effect to the law of the jurisdiction which, because of its relationship or contact with the occurrence or the parties, has the greatest concern with the specific issue raised in litigation.'[8]

Ostensibly, a state's interest is determined by analyzing the purpose of the relevant competing statutes and evaluating if and how that purpose would be furthered when applied to the facts of the present case; "[a] state's interest is defined solely based on the facts or contacts 'which relate to the purpose of the particular law in conflict.'"[9] In reality, as explained below, in criminal law cases, New York courts generally selectively cite precedent and use superficial reasoning to reach decisions that apply New York law.[10]

PART II: CASE ANALYSIS: NEW YORK'S CONFLICT OF LAWS APPROACH TO THE EXCLUSIONARY RULE

New York's execution of interest analysis in criminal cases is inconsistent.[11] Consider *People v. Benson*, the case that this paper's introductory fact pattern is based on.[12] In that case, a New York criminal suspect was arrested and interviewed in Texas by a New York State Police investigator.[13] Following New York law but violating Texas law, the investigator did not inform the suspect of his right to end the interview and also failed to tape the interview.[14] The New York State

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in determining which law to apply."); *see also* Cooney v. Osgood Mach., Inc., 612 N.E.2d 277, 280 (N.Y. 1993) ("Of the various, sometimes competing, schools of thought on choice of law, the one that emerged as most satisfactory was 'interest analysis.'").

8. Elmaliach v. Bank of China Ltd., 971 N.Y.S.2d 504, 514 (App. Div. 2013) (citations omitted).

9. *Id.* (citations omitted).

10. *See* John Bernie Corr, *Criminal Procedure and the Conflict of Laws*, 73 GEO. L. J. 1218, 1222 (1985) (finding that decisions on Conflict of Laws issues have a "strong tendency to apply forum state's law").

11. *Id.*

12. People v. Benson, 454 N.Y.S.2d 155, 156 (App. Div. 1982).

13. *Id.*

14. *Id.*

Supreme Court's Appellate Division had to decide whether that evidence should have been excluded.[15]

Applying interest analysis, the court rejected the defendant's appeal and held that New York law, not Texas law, applied.[16] An important underlying premise to the court's decision was how it framed the issue; the court found that the law at issue in this case was the exclusionary rule.[17] The conflicts issue at hand was not the differences between the criminal procedure of Texas and of New York; instead, it was that the two states potentially had different laws on whether the evidence should be excluded.[18] Thus, the key question was whether the policy behind the exclusionary rule would be furthered if applied to this case. The court concluded that "[h]ere, New York police officers obtained a statement for use in a New York proceeding emanating from a violent crime in New York. Application of the exclusionary rule would not serve any useful purpose since Texas authorities were not involved."[19] Essentially, the court assumed that Texas's rules were meant to govern the acts of Texan law enforcement and, because the police investigator was from New York, the Texas law was simply irrelevant.[20]

Benson's logic is attractively straightforward, and the case was cited in *People v. Douglas*, another New York case. *Douglas* involved a somewhat similar factual situation: a New York criminal suspect was arrested in Florida by Florida's law enforcement. While still in Florida, officers spoke with the defendant, who gave incriminating statements before he consulted with counsel.[21] In New York, a defendant cannot waive his right to counsel unless the waiver is done in the presence of his counsel; in Florida, a defendant can.[22] Moreover, unlike in *Benson*, the interrogating officers were from Florida, not New York.[23] Thus, here, Florida law enforcement conducted an interrogation that was legal

15. *Id.* at 157.
16. *Id.*
17. *Id.*
18. *See id.*
19. *Id.*
20. *Id.*
21. People v. Douglas, 472 N.Y.S.2d 815, 817–18 (Sup. Ct. 1984).
22. *Id.* at 821.
23. *Id.*

under Florida law but illegal under New York law. Citing New York law, the suspect-defendant moved for those statements to be excluded.[24]

Under the logic of *Benson*, one would expect the court to find that Florida law applied. Though the statements were to be used in a New York criminal proceeding, the defendant made the statements in Florida, and the officers who obtained the statements were from Florida. Since the officers involved were not from New York, presumably, New York does not have any interest in regulating their conduct.

However, the *Douglas* court ruled the opposite; it cited a number of New York criminal law decisions that had applied New York law to govern issues concerning the admissibility of evidence. Among the cases cited was *Benson*, which the court specifically used to support the proposition that "New York ha[s] a paramount interest in applying its own laws on admissibility," ignoring the fact that *Benson* had *rejected* applying Texas law upon *New York* law enforcement.[25] In fact, the court did not explain why New York has an interest in having its laws govern the issues of admissibility nor how that interest would be furthered in this specific case. Instead, after providing a brief description of various precedent, the court concluded that "in view of the cases outlined above, this court determines that New York law is applicable to the instant motion."[26] Rather than engaging in the substantive process of applying interest analysis, seeing what interests New York or Texas may have in those cases, and then weighing those interests against one another, the court superficially used precedent to support applying forum law.

Perhaps the *Douglas* court could have justified its decision by arguing that New York has a general interest in protecting the defendant's procedural due process. After all, the defendant was a New Yorker, and New York may have an interest in ensuring that the defendant, who was being tried in New York for crimes committed in New York, is afforded all of New York's procedural protections. However, this justification would also clash with *Benson*. Recall that *Benson* implicitly held that the issue in this kind of conflicts case was the potential difference in how the competing state laws would apply the exclusionary rule. Under New York law, "[t]he exclusionary rule is designed 'to deter future unlawful police conduct and thereby effectuate

24. *Id.*
25. *Id.*
26. *Id.* at 822.

the guarantee of the Fourth Amendment against unreasonable searches and seizures,' not redress 'a personal constitutional right of the party aggrieved.'"[27] In other words, the purpose of applying the exclusionary rule is to prevent future constitutional violations, not to repair violations that have already occurred.[28] Thus, any interest New York has in ensuring that its defendants enjoy the full protection of New York criminal procedure is unrelated to the interest underlying the exclusionary rule and is therefore irrelevant to the conflicts cases involving the exclusionary rule like *Douglas* and *Benson*.

Moreover, the *Douglas* decision did not meaningfully further the purpose of the exclusionary rule. In *Douglas*, the court held that New York law should apply and therefore excluded the evidence in question. As explained above, the exclusionary rule's sole purpose is to deter law enforcement from violating defendants' rights in the future. However, the two officers at issue in *Douglas* were from Florida. [29]In order for the *Douglas* decision to have any sort of deterrent effect, the decision would have to be taught to Florida's law enforcement, so that the next time Florida law enforcement arrested an out-of-state suspect, those officers would check and then follow the foreign state's rules of criminal procedure. Clearly, such a course of action is highly unrealistic; officers cannot be expected to be familiar with the rules of criminal procedure of the other states in case they encounter out-of-state defendants. In fact, often, officers do not even realize an arrestee is a foreign defendant until after the arrest and booking.[30] The purpose of exclusionary rule—to deter law enforcement from violating defendants' procedural protections in the future—is not furthered when used to exclude evidence obtained by foreign officers acting in a foreign state.

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27. People v. Adams, 422 N.E.2d 537, 541 (N.Y. 1981) (quoting United States v. Calandra, 414 U.S. 338, 347–48 (1974)).

28. *See* Elkins v. United States, 364 U.S. 206, 217 (1960) ("The [exclusionary] rule is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by the removing the incentive to disregard it.").

29. People v. Douglas, 472 N.Y.S.2d 815, 817 (Sup. Ct. 1984).

30. John Bernie Corr, *Criminal Procedure and the Conflict of Laws*, 73 GEO. L. J. 1218, 1229 (1985) ("In some cases, police may have no opportunity to learn in advance which jurisdiction will receive the evidence they obtain."); *see also* People v. Taylor, 814 N.Y.S.2d 892, 892 (Sur. Ct. 2006) (describing a situation where Utah police arrested a defendant for a local robbery only to discover after a search and investigation that he was also wanted for murder in New York).

Unfortunately, *Douglas* is not an atypical outcome; cases including *People v. Goodrich*[31] and *People v. Couch*[32] resulted in the court applying New York's more stringent laws to exclude defendant testimony that was gathered by law enforcement from foreign states. Such cases consistently replace reasoning with precedent to support the application of New York law. Ironically, in *People v. Graham*, a case where New York's law was less protective of defendant's rights, the court cited both the use of New York officers and the lack of furtherance of deterrence as reasons for applying New York law and rejecting the exclusion of evidence.[33] However, all three of these decisions resulted in the court applying New York law.

PART III: A BETTER ALTERNATIVE

A simple alternative rule that would resolve the aforementioned issues would be to hold police officers to the standard of their own state's rules. Thus, a court would exclude evidence that was gathered by police officers who violated the procedural laws of their state. But the court would not exclude evidence gathered by foreign law enforcement so long as the foreign officers followed their own state's rules of criminal procedure. This kind of an approach was applied in *People v. Taylor*, a case involving a New York criminal defendant arrested by Utah police but questioned by New York detectives.[34] The Utah police initially arrested the defendant, Taylor, for a bank robbery committed in Utah, but then discovered evidence that he had committed a murder in New York.[35] The Utah officers contacted New York law enforcement, and New York detectives flew into Utah for questioning.[36]

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31. People v. Goodrich, 437 N.Y.S.2d 599, 601 (Cnty. Ct. 1981) (holding that "a confession [] obtained by a foreign State's police officers" "must be suppressed" based on precedent, including People v. Graham, *infra* note 30).
32. People v. Couch, 424 N.Y.S.2d 304, 304 (App. Div. 1980) (holding that a confession obtained in Virginia by Virginian law enforcement should not be suppressed without discussing the conflicts issue).
33. *See* 396 N.Y.S.2d 966, 974 (Cnty. Ct. 1977) (noting that the majority of the police activity in the case was done by New York police and finding that police conduct in foreign states would not "require suppression as a deterrent").
34. People v. Taylor, 2006 NY Slip Op 50190(U), 2006 N.Y. Misc. LEXIS 259, at ***3–16 (Sur. Ct. 2006).
35. *Id.* at ***8–11.
36. *Id.* at *12.

At trial, when faced with issue of "whether the out-of-state search and seizure of the defendant and his subsequent arrest are to be analyzed by the laws of New York or . . . the laws of Utah," the court held that Utah's law would govern the actions of Utah police, and New York law would govern the interrogation conducted by the New York detectives.[37] It reasoned that it "would be illogical to apply New York law to the action of Utah law enforcement officials."[38] The interrogation "was performed by New York City detectives with respect to a crime which had occurred in New York."[39] Thus, because each state had a paramount interest in governing the actions of its own law enforcement and in the crimes that occurred within their territory, the actions of the officers of each state would be analyzed under the laws of their respective states.[40]

This clear rule offers several advantages. First, it would produce consistent, predictable outcomes; defendants, counsel, and law enforcement could know in advance what rules govern law enforcement's action. Second, it would properly acknowledge the realistic burdens of the law enforcement. As explained, excluding evidence gathered by foreign law enforcement in foreign states for not following New York Criminal Procedure does not meaningfully further New York's interest in using the exclusionary rule to deter future violations. Finally, the rule would improve judicial legitimacy by reducing forum bias. That New York courts favor New York law is neither surprising nor necessarily problematic; from a normative perspective, New York law is neither inherently less adequate nor less just than the laws of other states. However, the conflicting, often inadequate explanations New York courts provide to justify their decisions imply that their judges develop their opinions after having first decided that New York law rather than honestly reasoning to that conclusion. Perpetuating such a perception weakens both the appearance and actual administration of an objective justice system. States that adopt this rule will thus improve both the function and reputation of their judicial system.

37. *Id.* at ***14–18.
38. *Id.* at ***14.
39. *Id.*
40. *Id.*