Clark's testimony at the July 25, 1963 hearing on the Plaintiff's motion for a preliminary injunction impels the conclusion that the sheriff could not have believed that he had any sufficient legal justification for executing the affidavit and warrant for Lafayette's arrest. Any fair reading of the relevant testimony reveals that Sheriff Clark was fully aware of the reason for Lafayette's presence in Selma and of the degree of Lafayette's involvement in and supervision over the Negro voter registration drive. And any fair reading of the testimony reveals, too, that the Sheriff must have known what effect the arrest of Lafayette would have on the voter registration drive. Thus, it must be concluded that the only purpose Sheriff Clark could have had in acting as he did was to interfere with and frighten Lafayette and thereby impede the voter registration drive and intimidate prospective Negro registrants.

3. The Arrest of Alexander Brown - It is difficult to imagine a set of circumstances less credible than those which are supposed to have justified Sheriff

Clarke in arresting and imprisoning Alexander Brown on the charge of violating Title 14, Section 229 of the Code of Alabama.

The sheriff and some of his deputies were in the immediate vicinity of the mass meeting which was being held at the First Baptist Church on the evening of July 22, 1963. The sheriff stoped the car which Brown was driving because only one headlight was working. (Transcript, p. 31). When the sheriff asked him his name, Brown replied: "Alexander Brown." When the sheriff asked him to produce his driver's license, he produced it. When the sheriff saw that it was issued in the name of Alexander Lionel Love, he promptly and summarily placed Brown under arrest and had him sent to jail. There Alexander Brown spent the night.

We know what the sheriff did not do. He did not ask to see Alexander Brown's birth certificate, although Brown had a copy of it with him. (Transcript, p. 71) He

did not ask to see any other identification, although Brown had at least 5 other means of identification on his person at the time. (Transcript, p. 72, Plaintiff's exhibit #33). He did not ask whether Brown had any explanation for the discrepancy between the two names. Nor, most significantly of all, did he even permit Alexander Brown to explain the discrepancy, although such an explanation was attempted. (_____, pp. 70-71). Brown also attempted to explain the discrepancy to the deputy sheriff who took him to jail with a comparable lack of success. (Transcript, p. 7). Brown's explanation was simply that he had been born "Alexander Lionel Love", but had been raised since birth by his grandmother, Hattie Brown. Thus, he had always used the name of "Brown". However, because he was required to furnish a birth certificate in order to receive a driver's license, the license was made out in the name of "Love". (Transcript, p. 71, 72).

Each of the persons arrested was active in the Dallas County Voter Registration drive. Each of the persons was known by the sheriff at the time of the arrest to be working on voter registration activities. Each of the three was a youth and hence less able than others might have been to provide funds necessary to secure his release on bail. Each of the three was himself unable to vote in Dallas County, and this apparently led the sheriff to believe that the arrests could not constitute intimidation.

More significantly, still, in each case the sheriff seized readily upon the most convenient pretext under which to arrest them. In each case he manifested an unmistakable desire to blind himself from learning any reason why the arrest might not be justified. In Bosie Reese's case, it was enough that Reese reappeared in the County Courthouse. It didn't matter that he was not even near the voter registration line at the time. In Bernard Lafayette's case it was sufficient that the sheriff did not know whether Lafayette was employed, and it was

sufficient that Lafayette had been reported to have "begged" for money at the June 17 mass meeting. It did not matter that the sheriff never asked Lafayette or other Negroes about his employment; nor did it matter for what cause or in what context Lafayette had been "begging". In Alexander Brown's case, it was enough that Alexander Brown's name did not match the name on his driver's license. It did not matter at all that Alexander Brown had a perfectly plausible and reasonable explanation, or that he tried to tell the sheriff what the explanation was.

When viewed in this context, it is impossible, the plaintiff submits, to draw any conclusion other than that in making each of these arrests the sheriff's paramount, if not only, purpose was to interfere with the operation of the Negro voter registration campaign by directly intimidating and interfering with those who were most active in it, and by thereby indirectly intimidating all who might seek to become more active. In so doing, the sheriff acted in clear and open defiance of the command of the Fifteenth Amendment and the provisions of Section 1971(a) and (b) of Title 42, U.S.C.

4. The Surveillance of the Mass Meetings - It goes without saying that law enforcement officials have an important duty to furnish proper and adequate protection to those attending public gatherings. It is beyond argument, too, that these same officials have a more general duty to assure the maintenance of law and order

on the occasion of any such gatherings. For these reasons, the plaintiff does not and could not com plain in any way about the presence of a reasonable ~~x~~ number of law enforcement officers in the immediate vicinity of the various mass meetings. Indeed, given the apprehensions which doubtless created in the white community by the announcement that the Negro citizens of Dallas County were going to hold a public voter registration meeting, there may even have been more than sufficient cause for the presence of the extremely large number of sheriff's possemen at the first mass ~~x~~ meeting. All of this the plaintiff readily concedes, and were this all the sheriff had done, the plaintiff would have ~~xx~~ no complaint.

But the sheriff and those acting under his direction did much more. They did much more than simply provide fully adequate protection for the Negroes attending the mass meetings, and they did far more than take such reasonable measures as were needed to assure the maintenance of law and order. In particular, the sheriff and his deputies engaged ~~x~~ systematically in at least three practices which did not have, and which could not have had, any reasonable relationship to legitimate pro-

tective or enforcement aims, and which, instead, could only have been undertaken for the purpose of intimidating those persons present at the tmeetings, or contemplating attendance at them. Those practices were (1) the open recording of the license plate numbers of cars parked at and in the vicinity of the mass meetings; (2) the stationing of law enforcement officials inside the meetings for the purpose of having them make a full written record of what transpired; and (3) the placing of a law enforcement official inside the mass meeting for the purpose of having him make a contemporaneous broadcast of the meetin to police officials outside.

As to the taking of the license plate numbers, the sheriff made several half-hearted attempts to justify this activity by referring to the presence of several out-of-county cars (T. pp. 28, 37). The fact is, however, that the sheriff and his men did not simply take thelicense numbers of suspicious cars. Instead, "We took down all the tag numbers in the vicinity of each place...(and)we looked up to see who they belonged to." (T. p. 37) (The sheriff was unable to locate or produce the list of tag numbers and the names of the

owners (T. p. 37, p. .) They even made a record of the license plate numbers of the cars which were parked in the parking lots of the churches at which the mass meetings were held (T. pp. 92-93, affidavit of Bernard Lafayette, p. 6; affidavit of James Gildersleeve, p. 4). They could surely have had no other purpose in doing so other than to compile a record of the names of the Negro citizens who were attending the meetings. And while we can only speculate as to the use which might have been made of such a list, it does not require much imagination to envision what the effect of this activity must have been on the Negro community. Nor, is it hard to believe that the sheriff did not know what effect this massive identification program would have in a community in which, like almost any other Southern community, the economic livelihood of most Negroes is dependent upon the sufference of a white employee or white purveyor of goods and services.

The presence of uniformed officers inside the meetings can only have had, and can only have been known to have had, a like effect. Yet, the officers were not simply stationed inside the meetings as observers. At least one of them was

assigned the task of making a written record of the events which occurred and the speeches which were made (T. pp. 12, 36. P's exhibits No. 29-32). Another came to each meeting equipped with a walkie talkie over which he broadcasted a running commentary to the officials outside. (T. pp. 12, 36; affidavit of Bernard Lafayette, pp. 4, 7; affidavit of James Gildersleeve, pp. 3-3. That their talks were more than simply reportorial can be seen from the notes which constitute plaintiff's exhibits 31 and 32. There, with the events of the meetings, are the names of persons in the audience who were recognized by the police office — and even a stray license number.

Short of forcibly interfering with the conduct of the meetings or of preventing them from occurring at all, it is difficult to imagine a more intimidatory mode of behavior than that engaged in by the sheriff and his men. To be sure, there are times at which, and there ar places in which, the presence of police officers engaging in this type of surveillance — inexcusable as it may be — would have little if any effect upon the willingness of a populace to attend such meetings or to participate actively in the course of the meetings. But it is also

a fact —albeit a disgraceful one — that this could not have been true of the Negro citizens of Selma, Alabama, meeting to discuss voter registration activity in the year 1963. For these Negroes knew they lived in a community in which as a class they had been virtually unable to become registered to vote. They knew, too, that the leader of the voter registration campaign and the most active participatnt of the meetings, Bernard Lafayette, had been struck by unknown and unapprehended white assailants early in June of 1963 and had been arrested for vagrancy by orders of the ~~chief~~ chief law enforcement official of the County one week later. All this the sheriff knew as well. And yet ~~despite~~ despite this — or rather — because of this, he stationed men ~~at~~ inside and outside the churches during the meetings so that the people there would know, that he would know who it was who was coming to the meetings and what it was they said there. The wonder is not that these activities ~~have~~ took their toll upon Negro registration activity,but that so many Negroes attended the meetings, the sheriff's attempts at intimidation notwithstanding. (But take their toll they did. The voter registration clinics which enjoyed an average attendance of about 40

persons each month from February through May could attract only 14 persons in June, 5 on July 2nd and ~~xxx~~ none thereafter. The clinics were suspended after July 16, 1963 because of the lack of attendance. See T. pp. 87-90, P's exhibit No. 30.)

B. The Case Against Defendant Blanchard McLeod

The evidence against defendant McLeod can be stated quite succinctly. He was and is the Circuit Solicitor for the ~~xx~~ ~~xxx~~ Fourth Judicial Circuit of Alabama. In that capacity he prosecuted each of the three persons arrested by sheriff Clark Clarkx: Reese, Lafayette and Brown. In each of these three cases, Mcleod undertook the prosecution without making any real attempt to ascertain whether the charges had any basis in fact. In at least two of these three cases he had more than sufficient reason to know that the charges were baseless. In all three cases he knew full well of the degree of the accused's involvement ~~xxx~~ in local voter registration activity. In such circumstances, the plaintiff submits, the only reasonable inference which can be drawn is that McLeod's purpose in pursuing these prosecutions were simply to give continued impetus to the intimidatory purpose and effect of the sheriff's anticedent

In the case of Bosie Reese, we begin with the fact that prior to the date and time of trial — June 20, 1963 — McLeod had done nothing but talk to the arresting officer (T. p. 107). Then, even though the case was not finally heard until July 11, 1963, we learn that no investigation was made by McLeod during that two week period (T. p. 107).

This was the case, despite the fact that as a result of Counsel's arguments of June 20 and June 27, 1963 McLeod surely knew that it was the defendant's contention that Reese had been arrested because of his voter registration activities. (P's exhibit #6).

McLeod's conduct vis-a-vis the prosecution of Lafayette was more ominous still. Here, we begin with the fact that McLeod was present in the vicinity of the May 14 mass meeting; that he knew the meeting was concerned with voter registration; and that he knew of Lafayette's involvement in the meeting and the voter registration drive. (T. pp. 107-108, 110-111, 113). We continue with the fact that, despite this knowledge, McLeod "was not interested" either before or after Lafayette's arrest in learing by whom Lafayette was employed. (T. p. 113) Indeed, the only defense offered by Mcleod was that he had offered to

not prosecute Lafayette's case, if Lafayette's attorneys would tell him that Lafayette was gainfully employed. (T. pp. 106, 112-113). McLeod's testimony on this point was flatly and unequivocally denied by Solomon Seay, one of Lafayette's attorneys (T. p.). (Two revealing indications of McLeod's attitudes toward Lafayette's activities in particular and the voter registration drive in general are, first, his "proud" present membership in the Wilcos County White Citizens Council and his past membership in the Dallas County Citizens Council (T. p. 109) and second, his insistence, under cross-examination, that Mr. Doar knew Lafayett's purpose in coming to Selma because "You all knew, because you al sent him down here." (T. p. 113).

The clearest indication of McLeod's total lack of interest in satisfying even the most minimal standards of prosecutorial inquiry is found ~~in this~~ in his prosecution of Alexander Brown. Brown's ~~in~~ arrest took place on July 22, 1963. His trial didnot ~~was~~ occur until August 1, 1963. In the interim, and in particular on July 25, 1963, McLeod was made fully cognizant of all of the circumstances surrounding Brown's arrest and of the complete absence of any basis for believing that a violation of Title 14

Section 229 of the ~~Criminx~~ Code of Alabama had occurred. For, despite the fact that Brown, while under oath, had fully explained the discrepancy between the name he uses and the name which appears on his drivers license (T. pp. 68-73) and ~~x~~ despite the fact that McLeod was present throughout the entire hearing, McLeod pressed on one week later with the prosecution of Brown for ~~the~~ this offense (See P's exhbit #46)

In circumstances such as these it is the plaintiff's contention that the evidence clearly indicates that Mcleod could not have been making an honest attempt to prosecute only those cases which in his considered judgment indicated a violation of Alabama law. Instead, it can only be concluded that his purpose in prosecuting was to ill use the mechanism of the ~~xxx~~ criminal prosecution and the sanctions of the criminal law as the means by which to intimidate further those persons who had been actively working on behalf of Negro voter registration.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ALABAMA

NORTHERN DIVISION

THE UNITED STATES OF AMERICA, Plaintiff,	)	Filed Nov 12, 1963
v.	)	CIVIL ACTION NO. 3188-63
BLANCHARD McLEOD, ET AL., Defendants.	)	(Memo brief in Plaintiff's Motion attached and incorporated in Application for TRO

MEMORANDUM OF PLAINTIFF IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER

Officials of Dallas County, Alabama have issued subpoenas for six attorneys in the Civil Rights Division of the United States Department of Justice, including Assistant Attorney General Marshall, and for certain Negroes, some of whom reside in Dallas County. These subpoenas call for the appearance of these individuals before the County Grand Jury which is currently in session; the subpoenas directed to the federal officials, one of whom was personally served on Friday, November 8, place the appearance date at Wednesday, November 13.

The United States has filed a complaint in this court in two counts: (1) that Dallas County officials seek to use the County Grand Jury to investigate and interfere with the operations of the Civil Rights Division of the Department of Justice in contravention of the limitation on state powers in our federal system; (2) that these officials seek to use the Grand Jury in an effort to intimidate potential votes in violation of 42 U.S.C. 1971(b).

While the United States has filed a motion for preliminary injunction against both the summoning of attorneys of the Civil Rights Division of the Justice Department and the contemplated investigation of the Grand Jury itself, the Government's application for a temporary restraining order is directed solely against the former. In other words, the requested temporary restraining

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ALABAMA

NORTHERN DIVISION

THE UNITED STATES OF AMERICA, Plaintiff,	)	Filed Nov 12, 1963
v.	)	CIVIL ACTION NO. 3188-63
BLANCHARD McLEOD, ET AL., Defendants.	)	(the brief in Plaintiff's Motion and as incorporated in Application for TRO

MEMORANDUM OF PLAINTIFF IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER

Officials of Dallas County, Alabama have issued subpoenas for six attorneys in the Civil Rights Division of the United States Department of Justice, including Assistant Attorney General Marshall, and for certain Negroes, some of whom reside in Dallas County. These subpoenas call for the appearance of these individuals before the County Grand Jury which is currently in session; the subpoenas directed to the federal officials, one of whom was personally served on Friday, November 8, place the appearance date at Wednesday, November 13.

The United States has filed a complaint in this court in two counts: (1) that Dallas County officials seek to use the County Grand Jury to investigate and interfere with the operations of the Civil Rights Division of the Department of Justice in contravention of the limitation on state powers in our federal system; (2) that these officials seek to use the Grand Jury in an effort to intimidate potential votes in violation of 42 U.S.C. 1971(b).

While the United States has filed a motion for preliminary injunction against both the summoning of attorneys of the Civil Rights Division of the Justice Department and the contemplated investigation of the Grand Jury itself, the Government's application for a temporary restraining order is directed solely against the former. In other words, the requested temporary restraining

order would prevent the enforcement or service of subpoenas directed to Civil Rights Division attorneys pending a hearing by this court on the motion for preliminary injunction. By the same token, it would not otherwise prevent the functioning of the Grand Jury itself. This memorandum is confined to the request for a temporary restraining order.

The principal business of the Dallas County Grand Jury which will meet on November 12, as stated by County Solicitor McLeod, will be an impermissible investigation by a State Grand Jury of the Civil Rights Division of the Federal Government, Department of Justice. Such an investigation would interfere with the functioning of the United States Government and would reflect an excursion beyond the boundaries of state power in our federal system. It would also exceed the powers of the Grand Jury under Alabama law.

I. THE IMPENDING GRAND JURY INVESTIGATION IS AN OBSTRUCTION OF THE FUNCTIONING OF THE GOVERNMENT OF THE UNITED STATES AND IS BEYOND THE POWER OF THE STATE.

Governor Wallace's statement of October 17, which was quoted in both the Montgomery and Birmingham papers, indicates the nature and purpose of the Dallas County Grand Jury's projected investigation. Discussing his allegation that the Department of Justice had provided Rev. Martin Luther King with transportation around Alabama, he said that this "is a matter which should be called to the attention of the people of this country." Dallas County Solicitor McLeod's statement of November 7 expanded on Governor Wallace's remarks. Responding to the disclosure by the Department of Justice that Mr. King had used an automobile rented by the Department, Mr. McLeod asserted a need to publicize the activities of a part of the executive branch of the Federal Government, saying,

> "We do not intend to call off our investigation just because a part of the truth has been told. We intend to let the American people know who are the leaders in fostering the activities of Martin Luther King. We intend for that to be our main business and we intend to remain in session as long as necessary to get the facts."

So that there would be no mistake about the already obvious implication that Department of Justice personnel are "the leaders in fostering the activities of Martin Luther King," Mr. McLeod declared explicitly that the principal business of the Grand Jury will be to investigate the role of the Department in the area's racial unrest.

This declaration of intent has been borne out in fact. Preparations for the Grand Jury's inquiry began with the mailing of subpoenas to six Department of Justice attorneys, all of them in the Civil Rights Division, including Assistant Attorney General Burke Marshall and his First Assistant, John Doar. One of the attorneys, Mr. McIntyre, to whom a subpoena was addressed, has been with the Department only a few weeks. Another attorney, Mr. Marlin, who has been in Selma working on voter registration matters, was personally served on November 8.

The conclusion is therefore inescapable that the State of Alabama through the Dallas County Grand Jury has undertaken an investigation of the Civil Rights Division of the Department of Justice, and has done so in a manner calculated to harass that Division's attorneys in the performance of their duties. It is reasonable to assume that any attorney from the Civil Rights Division who comes to Alabama on federal business will be served with a subpoena, and possibly subjected to the threat of state sanctions if he refuses to divulge information derived while discharging his federal responsibilities. These are the intolerable prospects of an investigation by the State of an arm of the Federal Government.

It is an extremely rare occurrence in our federal system for a State to undertake a course of action so manifestly outside its power as an investigation into the activities of the Federal Government. When this did happen, in Pennsylvania in 1936, a Federal Court, at the instance of the United States, promptly enjoined the investigation. United States v. Owlett, 15 F. Supp. 736 (M.D. Pa. 1936). The facts underlying Owlett and the reasoning which the court there adopted are pertinent to the present attempt to subject the operations of the United States to state investigation. In that case, the Pennsylvania State Senate had become concerned that the Work Progress Administration was being used in Pennsylvania as an arm of the State Executive Administration for the purpose of building up a political machine instead of the agency's stated purpose of alleviating unemployment. It accordingly established a committee to investigate the organization and administration of the WPA in Pennsylvania. The committee began its task by subpoenaing the four top officials of the WPA operation in the State. These officials refused to appear, and the United States sued to enjoin the committee from pursuing its investigation, alleging, as we allege here, that the committee's charted path would be

> "contrary to and in obstruction of the proper governmental functions of that agency and of the laws of the United States of America; and that unless respondents are restrained the United States of America will suffer irreparable injury for which there is no adequate remedy at law." 15 F. Supp., at 737.

The Court found that the contemplated inquiry was "contrary to and in obstruction of the proper governmental functions of the United States": 15 F. Supp., at 740, as the Government had urged, and added the separate finding that the committee had "no jurisdiction to investigate" the WPA. Ibid. With the

additional finding that the United States had no adequate remedy at law and would suffer irreparable damage unless the committee were restrained from proceeding further, the injunction issued.

The impending Grand Jury investigation of the Department of Justice is on all fours with Owlett. One need only substitute the Department of Justice as the federal agency referred to, the Grand Jury as the investigatory body, and Alabama as the moving state, and the Court's reasoning in Owlett could as well be the ratio decidendi of the present case:

> "The attempt by the respondents, a committee appointed by the Senate of a sovereign state, to investigate a purely federal agency is an invasion of the sovereign powers of the United States of America. If the committee has the power to investigate under the resolution, it has the power to do additional acts in furtherance of the investigation; to issue subpoenas to compel the attendance of witnesses and the production of documents, and to punish by fine and imprisonment for disobedience. When this power is asserted by a state sovereignty over the federal sovereignty, it is in contravention of our dual form of government and in derogation of the powers of the federal sovereignty. The state having the power to subpoena may abuse that power by constantly and for long periods requiring federal employees and necessary records to be before an investigating committee. This power could embarrass, impede, and obstruct the administration of a federal agency." 15 F. Supp., at 742.

The Court's reasoning as to why the United States had no adequate remedy at law is equally applicable here. In the present instance, as in Owlett, approval of state power to investigate might well result in the Department's "employees ... being constantly called from their duties, ... its records ... [being] constantly kept from official use, ... [and] its employees subjected to illegal fine and imprisonment." 15 F. Supp., at 743. Here, as in Owlett,

> "The suggestion that federal employees could refuse to obey the subpoenas, or seek relief by habeas corpus from imprisonment for disobedience, is no relief. Although these remedies might in a measure protect

> the individuals, they do not in any degree protect the United States of America from an invasion of its sovereignty or from vexatious interruptions of its functions. If the United States of America were left to such remedies, it would be subjected to confusion and a multiplicity of suits. The respondents, unless restrained, are free to resort to different courts of co-ordinate jurisdiction within the commonwealth of Pennsylvania in attempts to punish federal employees for disobedience to subpoenas, or to compel attendance of witnesses and the production of documents. A court of equity will not subject the United States of America to a multiplicity of suits or compel federal officers and employees to incur the risk of fine and imprisonment to protect the United States of America from an illegal invasion of its sovereignty." Ibid.

Both this case and Owlett reflect a more general doctrine, which the Court there stated at the outset: "The complete immunity of a federal agency from state interference is well established." 15 F. Supp., at 741. It would be fruitless to discuss the many cases in which this doctrine has been applied.*/ It is crucial, however, to understand how fundamental is the principle which underlay the development of the doctrine. Its beginning, in fact, coincides with the beginning of American constitutional history. "The general government must cease to exist," said Justice Story for the Supreme Court in Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 363 (1816),

---

*/ See, e.g., Osborn v. Bank of United States, 22 U.S. (9 Wheat.) 738 (1824); Buchanan v. Alexander, 45 U.S. (4 How.) 20 (1846); Van Brocklin v. Tennessee, 117 U.S. 151 (1886); Bowles v. Willingham, 321 U.S. 503 (1944); Shanks Village Committee Against Rent Increases v. Cary, 197 F. 2d 212, 217 (2 Cir. 1952); In re Turner, 119 Fed. 231 (S.D. Iowa 1902); Ex parte Shockley, 17 F. 2d 133 (N.D. Ohio 1926); Pennsylvania Turnpike Comm'n v. McGinnes, 179 F. Supp. 578 (E.D. Pa. 1959), aff'd per curiam, 278 F. 2d 330 (3 Cir. 1960); Parry v. Delaney, 310 Mass. 107, 37 N.E. 2d 249 (1941); People ex rel. Brewer v. Kidd, 23 Mich. 440 (1871); Holms v. Emergency Crop & Seed Loan Office, 216 N.C. 561, 5 S.E. 2d 822 (1939); Board of Health v. Wilson, 181 S.W. 2d 999 (Tex. Civ. App. 1945).

"whenever it loses the power of protecting itself in the exercise of its constitutional powers." Brief reference to a few of the important applications of this principle, some of them cited by the Court in Owlett, will demonstrate their relevance both to that case and to the present case.

In Tennessee v. Davis, 100 U.S. 257 (1880), the Court considered and upheld the constitutionality of § 643 of the Revised Statutes (now 28 U.S.C. § 1442(a)(1)), which provided for removal to the federal courts of prosecutions and actions brought against federal officials in state courts for acts done by and under the authority of the revenue laws of the United States. In the Court's view, the reason for such a statute, as well as the very basis of its validity, was precisely the reason which underlies the need for injunctive relief here. A government can act only through its officers and agents, and our dual sovereignty makes it axiomatic that these persons must act within the States. If a State could arrest and try a Federal officer, "the operations of the general government may at any time be arrested at the will of one of its members." 100 U.S., at 263. The Court realistically recognized that a State's legislation "may be unfriendly, . . . may affix penalties to acts done . . . in obedience to . . . [the central government's] laws, . . . [and] may deny the authority conferred by those laws." Ibid. The Court's disposal of the idea that the exercise of constitutionally conferred authority can be thwarted by a State government in the following words: "We do not think such an element of weakness is to be found in the Constitution." Ibid. The State's projected utilization of its Grand Jury

in the present case amounts to exactly the kind of assertion of power which was discussed so profoundly by the Court in Tennessee v. Davis. For the preservation of our system of dual sovereignty the answer to that assertion of power must be the same as in Tennessee v. Davis -- that there is no such weakness in our Constitution.

A similar position was asserted by the Court in Tarble's Case, 80 U.S. (13 Wall.) 397 (1872). A court commissioner of the State of Wisconsin had attempted, by issuance of a writ of habeas corpus, to procure the discharge of a young man from the custody of a recruiting officer of the United States, with whom the young man had enlisted as a soldier. Justice Field phrased the question before the Court in terms of "whether any judicial officer of a State has jurisdiction to issue a writ of habeas corpus . . . for the discharge of a person held under the authority, or claim and color of the authority, of the United States. . . ." 80 U.S. (13 Wall), at 402. The Court answered the question by analyzing the interference with the affairs of the central government which would occur if the States had power to inquire into the validity of federal custody, and concluded that the existence of such a power in relation, for instance, to the raising of an army would have the effect of "greatly impairing the efficiency, if it did not utterly destroy, this branch of the public service." 80 U.S. (13 Wall.), at 408. The Court therefore held that the States have no jurisdiction in the questioned premises, and concluded its argument with the statement, equally applicable in the present circumstances, that "It is manifest

that the powers of the National government could not be exercised with energy and efficiency at all times, if its acts could be interfered with and controlled for any period by officers or tribunals of another sovereignty." 80 U.S. (13 Wall.), at 409. See also Ableman v. Booth, 62 U.S. (21 How.) 506 (1858).

Still a third relevant application of the general principle of Martin v. Hunter's Lessee is In re Neagle, 135 U.S. 1 (1890), where Justice Field's marshal, in the custody of California authorities after having killed a man who was attacking the Justice, was released on federal habeas corpus without having had to stand trial. In the course of its reasoning the Court quoted extensively from Tennessee v. Davis, supra, concluding ultimately that "if the prisoner is held in the state court to answer for an act which he was authorized to do by the law of the United States, and if in doing that act he did no more than what was necessary and proper for him to do, he cannot be guilty of a crime under the law of the State of California." 135 U.S., at 75. See also Ex parte Royall, 117 U.S. 241 (1886); Ex parte Beach, 259 Fed. 956 (S.D. Calif. 1919). Again, the principle is the same -- a State will not be allowed to frustrate the performance by federal officers of their duties. It is that principle which the Court in Owlett applied and which we urge the Court to apply today to prevent an otherwise inevitable and continuing pattern of interference with and harrassment of Department of Justice attorneys who are in Alabama only for the purpose of performing their assigned duties.

In addition to the applicability here of the basic principles concerning the relationship of the central government to its member States, the principle underlying such cases as Barr v. Matteo, 360 U.S. 564 (1959), and Gregoire v. Biddle, 177 F. 2d 579 (2 Cir. 1949), cert. denied, 339 U.S. 949 (1950), is also instructive. These cases of course are the leading expressions of the official immunity doctrine, which protects federal officials from suit for acts done within the scope of their authority. The breadth of this protection is instructive as to why the threatened calling of Department of Justice attorneys here would be an undue interference in the performance of federal duties. The courts in the official immunity cases have felt that the interest in keeping all officials from the burden of a trial is so great that certain lines of inquiry must be kept completely closed. Thus, it is simply not open to a plaintiff to prove that the official though acting within his powers, did so for personal motives or out of malice. Barr v. Matteo, supra, 360 U.S., at 575; Gregoire v. Biddle, supra, 177 F. 2d, at 581; see also Bradley v. Fisher, 80 U.S. (13 Wall.) 335 (1872); Spalding v. Vilas, 161 U.S. 483 (1896); Yaselli v. Goff, 12 F. 2d 396 (2 Cir. 1926), aff'd per curiam, 275 U.S. 503 (1927). Similarly, the definition of scope of authority is not limited to acts of an official which turn out to have been authorized, but extends to act which were done "in relation to matters committed by law to his control and discretion," Standard Nut Margarine Co. v. Mollon, 72 F. 2d 557, 559 (D.C. Cir.), cert. denied, 293 U.S. 605 (1934), or which had "more or less connection with the general matters committed by law to his control or supervision," Spalding v. Vilas, supra, 161 U.S., at

498; see also Cooper v. O'Connor, 99 F. 2d 135, 139 (D.C. Cir.), cert denied, 305 U.S. 643 (1938); Gregoire v. Biddle, supra, 177 F. 2d, at 581. This strong policy against inquiry into a federal officer's performance of his functions is applicable in all courts, federal and state. A similar concern should prevent the federal officials involved here from having to appear and testify before a State investigating body about their activities on behalf of the Federal Government.

II. THE UNITED STATES HAS NO ADEQUATE REMEDY AT LAW AND A FEDERAL COURT IS THE APPROPRIATE FORUM FOR THE GRANTING OF EQUITABLE RELIEF.

The United States has no adequate remedy at law. That it will suffer irreparable injury if this Court does not issue its preliminary injunction to protect the subpoenaed attorneys from appearing before the grand jury and the hazards entailed therein is demonstrated initially by reference to the quoted discussion from Owlett, pp. 5, 6, supra, which explained why the Federal Government's remedy at law was inadequate in that case, and which, as noted at p. 5, is applicable here. Here, as in Owlett, a remission of the subpoenaed attorneys to whatever rights the State's courts would afford them will result not only in the basic interference with federal functions which is implied in the diversion of federal attorneys from their duties for an invalid purpose.

It could also result in the attempted subjection of these attorneys to state sanctions while they test, in the state courts, the power of the State to call them to testify. The fact is that Alabama has no procedure for challenging the authority of a grand jury to investigate in a particular area before it begins its projected

inquiry; the accepted manner of challenge is to assert objections in the contempt proceeding held after refusal to give the testimony demanded by the grand jury. See Ex parte Morris, 252 Ala. 551, 42 So. 2d 17 (1949); State v. Knighton, 21 Ala. App. 330, 108 So. 85 (1926). Particularly in view of Solicitor McLeod's announced intention "to remain in session as long as necessary to get the facts," it is evident that any federal employee's appearance before the grand jury, let alone one wherein he seeks to challenge the power of that body to summon him before it, will constitute a substantial interference with the proper performance of federal functions. Remedies other than the relief available in a Federal court in equity are manifestly inadequate to prevent this interference.

That a federal court should act to determine claims of federal officials as to the invalidity of state action is a conclusion in full accord with the long-established principle that in matters where the state and federal sovereignties collide it is the federal forum where the dispute should be resolved. Tarble's Case, supra, 80 U.S. (13 Wall.) at 407; In re Neagle, supra, 135 U.S., at 75. This principle -- that the Federal forum is the place for resolution of asserted state incursions upon the federal domain -- is the basis for the rule that 28 U.S.C. §2283, which prevents federal injunction of pending state-court proceedings (of which a grand-jury proceeding is certainly one), does not apply to suits for injunction brought by the United States. Leiter Minerals, Inc. v. United States, 352 U.S. 220 (1957); United States

v. Wood, 295 F. 2d 772 (5th Cir. 1961), cert. denied, 369 U.S. 850 (1962).*/ In cases like the present one,

> "The United States, as a litigant, may come into its own courts and seek relief against a proceeding to which it is not and cannot be made a party, but the judgment in which might affect acts of its executive officers and those acting under them." United States v. Western Fruit Growers, 34 F. Supp. 793, 796 (S.D. Calif. 1940), modified, 124 F. 2d 381 (9th Cir. 1941).

III. THE IMPENDING GRAND JURY INVESTIGATION IS INVALID AS A MATTER OF THE ALABAMA LAW RELATING TO THE POWERS OF GRAND JURIES.

The basic duties of a grand jury in Alabama are

> "to inquire into all indictable offenses committed or triable within the county, which, as they may be advised by the court, are not barred by lapse of time, or some other cause; and to perform such other duties as are, or may be by law required of them." 30 Ala. Code § 77 (1958).

In the present case the announced purpose of the grand jury investigation is to publicize the activities of the Department of Justice of the United States Government in Alabama, an inquiry from which, by definition, no indictments relating to the substance of the investigation can possibly issue. That being the case, this investigation is only valid as a matter of Alabama law if the State permits grand juries to issue reports which merely contain criticism of public officials unaccompanied by any indictments, a practice which some states permit.**/

---

*/ See also United States v. Inaba, 291 Fed. 416 (E.D. Wash. 1923); United States v. Babcock, 6 F. 2d 160 (D. Ind. 1925); modified and aff'd, 9 F. 2d 905 (7th Cir. 1925); United States v. McIntosh, 57 F. 2d 573 (E.D. Va. 1932), appeal dismissed as untimely, 70 F. 2d 507 (4th Cir. 1934); United States v. Western Fruit Growers, 34 F. Supp. 793 (S.D. Calif. 1940), modified 124 F. 2d 381 (9th Cir. 1941); United States v. Cain, 72 F. Supp. 897 (W.D. Mich. 1947).

**/ E.G., In the Matter of Camden County Grand Jury, 10 N.J. 23, 40-44, 89 A. 2d 416, 426-28 (1952).

However, even assuming that a State which allows such reports would permit its Grand Jury to "investigate" the Federal Government, Alabama, like the majority of states,*/ does not permit such reports at all. In Alabama a public official who is criticized by a Grand Jury without being indicted or impeached is entitled to have the Grand Jury report expunged from the records. Ex parte Robinson, 231 Ala. 503, 165 S. 582 (1936); Ex parte Burns, 261 Ala. 217, 73 So.2d 912 (1954). Thus, the prospective Grand Jury investigation is invalid as a matter of Alabama law. This, in turn, provides additional support for the intervention of this Court to protect the Federal Government and its officials from the burden and harassment of an invalid Grand Jury investigation -- particularly where the state, as here, affords no remedy under state law. Compare In re National Window Glass Workers, 287 Fed. 219 (N.D. Ohio 1922); McNair's Petition, 324 Pa. 48, 187 Atl. 498 (1936); 4 Wharton, Criminal Law and Procedure § 1687 (1957). See also Brown v. United States, 245 F.2d 549 (8th Cir. 1957).

IV. THE FIFTH CIRCUIT'S HOLDING IN UNITED STATES V. WOOD REQUIRES THIS COURT TO GRANT A TEMPORARY RESTRAINING ORDER IN THE PRESENT CIRCUMSTANCES.

In the United States v. Wood, 295 F.2d 772 (5th Cir. 1961), cert. denied, 369 U.S. 850 (1962), the Court of Appeals for this Circuit reversed the denial of a temporary restraining order in a case which, in the absence of such an order, would

---

*/ See Application of United Elec. Workers, 111 F. Supp. 858, 866-67 n. 28 (S.D.N.Y. 1953) & cases cited therein.

have been mooted by the time a full hearing on preliminary injunction could have been held. The Court's holding was that because the time element would have converted the trial court's denial of the temporary restraining order into a de facto dismissal of the action, the trial court had an obligation to preserve the status quo until a full hearing, either on the preliminary or permanent injunction, could be held, 295 F.2d, at 785.

The present situation involves the same kind of pressing time problem. Subpoenas have been issued calling for the appearance of six attorneys in the Civil Rights Division before the Dallas County Grand Jury on Wednesday, November 13. Unless this Court issues a temporary restraining order, the case will be mooted in that Attorney Marlin, who has been personally served, will be subject to sanctions if he does not appear. The other attorneys will be subject to similar sanctions if they are required by their official duties to go to Alabama. To prevent the important rights of the United States which are set forth in this memorandum from going unadjudicated, it is the Court's plain obligation under Wood to issue the temporary restraining order.

V. CONCLUSION

Invalid both as a matter of federal law and as a matter of state law, the impending Dallas County Grand Jury investigation of the Department of Justice has no basis for proceeding. Its announced purpose is to enter into an area which is forbidden to it by both federal and state law. The preliminary steps taken in preparing for it indicate that it will be con-

ducted in a manner calculated to interfere with attorneys of the Civil Rights Division who come to Alabama on the Government's legal business. In light of these facts and their legal consequences, this Court should issue the temporary restraining order sought by the United States.

Respectfully submitted

JOHN W. DOUGLAS
Assistant Attorney General

VERNOL R. JANSEN
United States Attorney

PETER B. EDELMAN
Attorney, Department of Justice

Attorneys for Plaintiff

I. The defendant, Dallas County Citizens' Council, is a party which may be sued as an entity in this action

Rule 17(b) of the Federal Rules of Civil Procedure provides, in relevant part that ~~except in certain circumstances not here relevant~~, "... capacity to sue or be sued shall be determined by the law of the State in which the District Court is held, except (1) that a partnership or other unincorporated association, which has no capacity by the law of such State, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States ...." The substantive rights sought to be enforced against the defendant are rights established by Amendment Fifteen to the Constitution of the United States and by 42 U.S.C. 1971 (b). Thus, the grounds proposed in paragraph 2 and 3 of the motion to dismiss are not meritorious.

II. Where registration is a prerequisite under State law ~~of~~ to the right to vote, 42 U.S.C. 1971 prohibits racial discrimination against or intimidation of prospective or actual registrants.

In Alabama, registration is a prerequisite to voting, Ala. Const. §§178, 181, 184. ~~In such circumstances, it has been~~

Where such is the case, it has been consistently held that ~~the prohibitions of 42 U.S.C. 1971(a) and (b)~~ the reach of the provisions of 42 U.S.C. 1971 extends to actions taken in respect to actual or prospective registrants. See e.g. U.S. v Raines 362 U.S. 17 (1960); U.S. v Alabama 192 F. Supp. 677 (M.D. Ala, Fed); U.S. v Wood, 295 F.2d 772 (5th Cir. 1961); U.S. v Beaty 288 F.2d 653 (6th Cir 1961) Thus, the grounds proposed in paragraphs 5, 6, 18, and 20 are not meritorious

U.S. v Altus — F.2d — (1963)

III. The Complaints ~~states~~ legally sufficient a claim against the defendant, Dallas County Citizens' Council.

Rule 8(a)(2) of the Federal Rules of Civil Procedure provides that a ~~claim~~ pleading which sets forth a claim for relief shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief." ← The authoritative interpretations of this ~~R~~ rule and ~~not~~ its place within the scheme of the Federal Rules make it plain that "... a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove not set of facts in support of his claim which would entitle him to relief". Conley v Gibson 355 U.S. 41, 45-46 (1957)

It is apparent from this, and has been so held on innumerable occasions, that a complaint cannot be dismissed for a failure to set forth the specific facts which support or which will prove the truth of the general allegations. A complaint is sufficient whenever ~~it~~ it gives fair notice of the nature of the plaintiff's claim and the grounds on which the claim rests. See ~~e.g.~~ in particular Conley v Gibson 355 U.S. 41, 47 (1957) where a

general allegation of racial discrimination ~~was~~ in labor union practices was held sufficient to state a cause of action. And see also, Black v First National Bank of Mobile, 255 F. 2d 373 (~~11~~ 5th cir., 1958), Millet v Godchaux Sugars Inc. 241 F. 2d 264 (5th Cir., 1957); 2 Moore, Federal Practice §§ 8.13, 12.08.

The ~~com~~ plaintiff's Complaint clearly alleges that the defendant, Citizens Council has ~~engaged~~ committed or attempted to commit various intimidatory actions which were undertaken for the purpose of interfering with the rights of persons to vote in federal elections. ~~(Paragraph 5 (1) (2) (3) (4) (5) (6) (7) (8) (9) (10)~~ ~~As such, the Complaint gives the defendant fair notice of the nature of the plaintiffs~~

Since the ~~s~~ action against the defendant is expressly brought under 42 U.S.C. 1971 (b), and since that subsection expressly prohibits conduct of this sort, ~~this~~ the Complaint does give the defendant fair notice of the nature of the plaintiff's claim and the ground upon which it rests.

For these reasons, the grounds proposed in paragraphs 26, 27, 28, 29, 31, 33, 34

Burke Marshall
Assistant Attorney General
Civil Rights Division

11/15/63

Richard Wasserstrom

Alabama Law relating to Testimony given before a Grand Jury.

Title 30 Code of Alabama §95 provides: "Any judge, solicitor, clerk, or other officer of Court, or Grand Juror, who discloses the fact that an indictment has been found, before the defendant has been arrested, or has given bail for his appearance to answer thereto, must, on conviction, be fined not less than $200, and may also be imprisoned in the county jail, or sentenced to hard labor for the county for not more than six months."

§96 provides: Any person who, having been a witness before the Grand Jury, discloses the name of the person about whom he testified, or any of the facts to which he testified, before the arrest of the person against whom he testified, or before such person has given bail for his appearance to answer the indictment or indictments found against him, must, on conviction, be fined not less than $100, and may also be imprisoned in the county jail, or sentenced to hard labor for the county for not more than six months".

These two statutes pose a real and immediate problem for us vis-a-vis both our preparation for the hearing on our motion for a preliminary injunction, and the presentation of our case at the hearing. More specifically, if we assume that under Alabama law these statutes would prevent any inquiry into, or disclosure of, the Grand Jury proceedings, then we have to decide how best to challenge that result and secure the information needed to prove the relevant allegations of our complaint.

There are, I think, at least 10 different approaches we might take. These are set out in outline form below. While I have not researched the problem at all thoroughly, I think that the most desirable way to proceed would be to move before a three judge court for an injunction against any prosecutions for

violations of these statutes as applied to persons furnishing information about this Grand Jury, and for a judgment that the Alabama Law which keeps secret the proceedings of a Grand Jury must yield before our right to inquire into and secure information concerning its proceedings.

POSSIBLE APPROACHES

1. Call the Negroes as witnesses at the hearing on our motion for an injunction. Have them refuse to testify as to the Grand Jury proceedings. Request that the judge order them to testify, the justification being the Supremacy Clause and paramount federal interests.

   a. Advantages

      1. If they are so ordered and do testify, they are surely immune from state prosecution.

      2. We have very strong arguments in favor of granting the request.

   b. Disadvantages

      1. We are precluded from knowing anything about their experiences before the Grand Jury prior to the time they are put on the stand.

      2. Judge Thomas will doubtless refuse to order them to testify and this cannot be appealed until after he decides the case.

2. Call the Negroes as witnesses and have them testify voluntarily as to the Grand jury proceedings.

   a. Advantages

      1. We have a chance of getting facts about the Grand Jury into the record.

   b. Disadvantages

      1. Judge Thomas would probably sustain an objection made by the defense that Alabama law prevents permitting this testimony.

2. The Negroes seem a greater risk of being prosecuted if they do reveal the proceedings, and then immunity is less clear.

3. Call the relevant defendants as witnesses and ask them about the Grand Jury proceedings.

   a. Advantages

      1. If they are required to testify, they surely won't be subsequently prosecuted by the State.

   b. Disadvantages

      1. Judge Thomas will doubtless sustain their claim of privilege.

      2. Even if he didn't, their testimony might be untruthful.

4. Seek to take the depositions of the Negroes and for those of the relevant defendants, and seek to resolve the legal issues at that time.

   a. Advantages

      1. Might resolve the issues favorably before trial.

   b. Disadvantages

      1. Thomas would doubtless rule against us.

      2. His adverse ruling is probably not appealable before trial.

5. Subpoena for production at the hearing the minutes of and transcript of testimony before the Grand Jury.

   a. Advantages

      1. No possibility of criminal prosecutions against Negroes.

      2. Accurate account of what transpired.

b. Disadvantages

1. There may not be a transcript

2. It may be inaccurate

3. Thomas would doubtless sustain objections to its production.

6. Seek to discover the minutes and transcript before trial. Advantages and disadvantages pretty much the same as (5) and (4).

7. Have Department attorneys or FBI interview the Negroes concerning their testimony before the Grand Jury.

a. Advantages

1. We get the relevant information when we need it, i.e. before the hearing.

b. Disadvantages

1. The Negroes will surely be prosecuted under §96
2. Their immunity from prosecution is somewhat doubtful.
3. They would bear the burden of litigating their immunity.
4. Thomas might still refuse to allow their testimony.
5. Dept. attorneys might be accused of, and indicted for, solicitating commission of a crime.

8. Move before Judge Thomas on a proceeding ancillary to our complaint to enjoin the prosecution of anyone who reveals to us otherwise forbidden information concerning this Grand Jury.

a. Advantages

1. Possibility of satisfactory adjudication before trial and full protection for Negroes who talk to us and who subsequently testify.

2. If denied, it is probably appealable.

b. Disadvantages

1. Thomas will not grant it.

9. Move for a three judge court to enjoin enforcement of §96 on the ground that the statute is unconstitutional as applied or as capable of being applied to proceeding of this Grand Jury.

a. Advantages

1. Greatest probability of success on the legal issues at earliest date.

2. Full protection for Negroes.

b. Disadvantages

1. Possible lack of standing to sue.

2. Possible adsence of present case or controvery since no one has violated the statute or been threatened with prosecution.

10. Seek a declaratory judgment as to the unconstitutionality of the statute on the same ground as (9).

a. Advantages

1. May be less of a standing or case or controversy problem.

b. Disadvantages

1. Can we get a three judge court?

This memorandum discusses the following questions: (1) whether, under Alabama law, persons may be prosecuted for informing Department of Justice attorneys, or for testifying, at the hearing on the motion for preliminary injunction in United States v. McLeod, as to what they said before the Dallas County Grand Jury; 1/ (2) whether, assuming that Alabama law has this effect, such prosecutions would be enjoinable by the United States as violative of federal law, and (3) the procedure which should be followed in order to guarantee protection for Negro witnesses informing Department of Justice attorneys of their testimony before the grand jury and testifying at the hearing with respect to their grand jury testimony, and in order to prove our case.

Title 30, Code of Alabama, §95 provides:

> Any judge, solicitor, clerk, or other officer of Court, or Grand Juror, who discloses the fact that an indictment has been found, before the defendant has been arrested, or has given bail for his appearance to answer thereto, must, on conviction, be fined not less than $200, and may also be imprisoned in the county jail, or sentenced to hard labor for the county for not more than six months.

Title 30, Code of Alabama §96 provides:

> Any person who, having been a witness before the Grand Jury, discloses the name of the person about whom he testified, or any of the facts to which he testified, before the arrest of the person against whom he testified, or before such person has given bail for his appearance to answer the indictment or indictments found against him, must, on conviction, be fined not less than $100, and may also be imprisoned in the county jail, or sentenced to hard labor for the county for not more than six months.

1/ Mr. Wasserstrom is researching the question of whether the Dallas County Grand Jury proceedings are authorized by Alabama law.

We do not know whether the Dallas County Grand Jury will return an indictment. As long as it may return an indictment, we think it likely that the above statutes would apply. However, it would appear that unless one of the officials named in Section 95 were asked a question at the hearing which required him to reveal the name of a person against whom an indictment had been found, Section 95 would be inapplicable. Under Section 96, a witness might be asked whether he testified against a particular person or whether he testified generally about conditions in Dallas County. If he answered that the latter was so, it would appear that Section 96 would be inapplicable to his subsequent testimony. 2/

In addition to Sections 95 and 96, Sections 73 and 74 of Title 30 should be considered. Under these sections the grand jury foreman and jurors swear that "the state's counsel, your fellows', and your own, you shall keep secret." Although witnesses are sworn in (Sec. 85) there is no provision in the Code for them to take an oath of secrecy. (However, in Ex parte Montgomery, 244 Ala. 91, 95, 12 So. 2d 314 the Supreme Court indicated that witnesses are sworn to secrecy within the meaning of Section 85).

The Alabama Supreme Court has stated that the requirement of secrecy refers to premature disclosures of the action of the Grand Jury, and that it is largely ended after an indictment has been found and the accused arrested. Ex parte Montgomery, supra. The policy behind the secrecy oath is twofold: first, to prevent a possible escape by an accused before an

---

2/ It has been suggested that Section 96 may be inapplicable to the disclosure of questions asked by the grand jury, as distinguished from the answers given. We think, however, that this would be a risky argument to make, in view of the fact that the disclosures of leading questions may well reveal the facts to which a witness testified.

arrest has been made; and second, to promote free discussion and deliberation by the grand jury. Rush v. State, 253 Ala. 537, 45 So. 761. Once an indictment has been found, a witness has no privilege to have his testimony kept secret. Ex parte Montgomery, supra. As no indictment has been returned in the instant proceedings, the Alabama policy favoring secrecy would appear to be applicable. Conceivably, therefore, persons who do not come within the prohibitions of Sections 95 and 96, might nevertheless be prosecuted for false swearing under Alabama law.

Assuming, however, that Alabama law prohibits disclosure either of questions asked or answers given before the Dallas County Grand Jury, there remain the questions (II) whether federal law would prohibit prosecution under the laws of Alabama, and (III) if so, what procedure we should follow in order to secure the testimony which we wish to secure and at the same time afford maximum protection to our Negro witnesses.

II

Our lawsuit (United States v. McLeod) seeks to vindicate rights granted by federal law. Obviously, these rights would be meaningless in the absence of power to establish their violation in court. But the Supremacy Clause protects the right to litigate in federal court. Whenever the Constitution vests judicial power over any class of cases, and Congress confers jurisdiction over that class of cases upon district courts, the Constitution itself prohibits a state from interfering with the exercise of that jurisdiction or imposing penalties upon its exercise. Terral v. Burke Construction Co., 257 U.S. 529 (1922); Carson Construction Co. v. Fuller Webb Corp., 198 F. Supp. 464, 467, n. 1 and cases cited; see Ex Parte Young, 209 U.S. 123 (1908); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 378, 383 (1821); cf. Bomgar v. Keyes, 162 F. 2d 136 (C.A. 2, 1947). Moreover, for a state to prosecute a person either for giving information to Department of Justice attorneys with reference to their testimony before the grand jury or for the act of testifying in a federal court with respect to such testimony, would clearly abridge that person's privilege of United States citizenship, i.e. to provide federal officers with information concerning violations of federal law and to "assist in putting in motion the course of justice." In Re Quarles and Butler, 158 U.S. 532 (1895). Such prosecution might also violate 42 U.S.C. 1971(b), if, as we have argued in United States v. Board of Education of Greene County, No. 20,212, C.A. 5, pending on appeal, interference with voting litigation constitutes an interference with the right to vote protected by subsection (b).

Since the state prosecution would violate federal law and would interfere with interests of the United States, i.e., in vindicating voting rights under section 1971(b), in preventing the harassment of federal officials engaged in the performance of their duties, and possibly in the administration of justice, the prosecution would be enjoinable at the behest of the United States.

To be sure, we would be challenging a state criminal proceeding. But state criminal proceedings,

like other state proceedings, must yield to paramount federal law. Hunt v. United States, 278 U.S. 96 (1928). The statutory bar to federal court injunctions staying state court proceedings (28 U.S.C. 2283) is inapplicable where the United States is the plaintiff. Leiter Minerals, Inc. v. United States, 352 U.S. 220 (1957); United States v. Wood, 295 U.S. 772, 778 (C.A. 5, 1961), cert. denied, 369 U.S. 850 (1962). There may be a problem posed by Douglas v. City of Jeannette, 319 U.S. 157, 163 (1943), which postulated the equitable rule that courts of equity will not ordinarily restrain criminal prosecutions "since the lawfulness or constitutionality of the statute . . . on which the prosecution is based may be determined as readily in the criminal case as in a suit for an injunction." In Wood v. United States, supra, however, the Court of Appeals for the Fifth Circuit distinguished Douglas v. City of Jeannette on the grounds that (1) "where the United States * * * [seeks] to stay irreparable injury to a national interest, the normal equitable doctrines of comity between the court systems, doctrines which are the basis of the Douglas v. City of Jeannette rationale, have little or no bearing" and where the United States brings the suit, the Attorney General must have concluded, in a judgment unbiased by the subjective opinion of the private individuals who have been injured, that a violation of a national interest has taken place; 3 / (2) The Attorney General had brought suit under 42 U.S.C. 1971(b), a mandatory jurisdictional statute; (3) section 1971(b) creates a cause of action for "preventive relief" from intimidation and expressly denies the necessity for exhaustion of state remedies, and (4) in civil rights cases, doctrines of comity do not apply. At least some, and possibly all, of these reasons could be assigned to

---

3 / See Hunt v. United States, 278 U.S. 96 (1928) -- decided before Douglas v. City of Jeannette, where the Supreme Court affirmed a decree enjoining state officials from arresting or prosecuting officers and agents of the United States under the state game laws for the killing,

(Continued on following page)

November 4, 1963

AIR MAIL-SPECIAL DELIVERY

Honorable William F. Thetford
Solicitor
Fifteenth Judicial Circuit of Alabama
County Court House
Montgomery 4, Alabama

Dear Mr. Thetford:

Mr. Hardeman has forwarded to me your letter of October 28, in which you state that you are submitting evidence to the November Grand Jury "as a matter of public interest" relating to charges concerning the use of automobiles rented by Department of Justice lawyers.

Your letter states that no violation of state law is involved.

In view of this fact, I see no point in furnishing witnesses to testify in a secret proceeding on a matter admittedly beyond the scope of the Grand Jury's legitimate inquiry. The facts on this matter have been given to the public through a statement issued by the Department on October 18, 1963.

For your information I enclose a copy of the statement.

Very truly yours,

Enclosure

cc: Hon. Don Hardeman
U. S. Attorney
Montgomery, Ala.

BURKE MARSHALL
Assistant Attorney General
Civil Rights Division

SELMA, ALABAMA, TIMES-JOURNAL, November 7, 1963

[illegible]

The principal business of the Dallas County Grand Jury, which will meet on November 12, will be to investigate the role of the Justice Department in the racial unrest in this area, Circuit Solicitor Blanchard McLeod declared today.

"We do not intend to call off our investigation just because a part of the truth has been told," McLeod said. "We intend to let the American people know who are the leaders in fostering the activities of Martin Luther King. We intend for that to be our main business, and we intend to remain in session as long as necessary to get the facts."

McLeod's statement came on the basis of an admission by the Justice Department that a car rented by the department had been used to transport Martin Luther King from Birmingham to Selma for a speaking engagement in mid-October. The Justice Department had earlier denied the charges.

McLeod disclosed that subpoenas had been sent to several Justice Department officials, ordering their appearance before the grand jury, and he speculated that,

"As soon as they found out what we were doing and realized that they would have to tell the truth under oath, they decided to admit that a Justice Department car had been used to bring King to Selma."

Since some of the Justice Department officials and employees to whom the subpoenas were sent do not live in Alabama, they cannot be required to appear before the grand jury, McLeod explained, but he added that he was interested to see if the federal government would honor the requests for their appearances. The subpoenas were sent by registered mail, he said.

"At the time that we gave information to the Justice Department that one of the cars rented by them was used to transport King to Selma, they denied it and accused us of lying. Yet at that time the Justice Department had all the facts they have now and they also had all their employees available for questioning."

McLeod called Justice Department Attorney Thelton Henderson the "scapegoat" in the case, pointing out that Henderson doubtless did not make arrangements for King's ride to Selma alone.

Sheriff Jim Clark had earlier called Henderson the scapegoat of the affair. In a statement issued yesterday, Clark said:

"In the light of the overall activity of the Justice Department in fomenting civil disobedience in Alabama, it is particularly regrettable that they have seen fit to make Thelton Henderson, a Negro Justice Department lawyer, the official scapegoat of its misconduct.

"The lie that was told in denying the charge made by officials of the State of Alabama and the sheriff's department of Dallas County is indicative of many other untrue statements made by the civil rights division of the Justice Department and racial agitators such as Martin Luther King."

MONTGOMERY, ALABAMA, ADVERTISER, OCTOBER 17, 1963

Cars Rented By Justice Dept. Used To Haul King

By BOB INGRAM

Automobiles rented by the U.S. Department of Justice were used Tuesday to transport Dr. Martin Luther King, Negro leader in the civil rights movement, from Birmingham to a rally in Selma and thence to Montgomery's municipal airport.

Dallas County Sheriff James G. Clark told The Advertiser that he personally saw King being driven into Selma in a tan four-door blue Chevrolet Impala bearing license tags (No. 3-61700) issued to Hertz U-Drive-It of Montgomery.

He added that an investigation, triggered by his department, revealed that this automobile was rented Sept. 14 at 7:07 p.m. by Kenneth G. McIntyre, a member of the staff of the Civil Rights Division of the Justice Department (rental No. 462076).

* * *

FURTHER INVESTIGATION showed that a charge card (code No. 1560-237-0607-0-NA) was used to rent the car. The card was issued to the Justice Department, Civil Rights Division, Washington 25, D.C.

The sheriff said another automobile, a 1961 Ford, also rented by Hertz to the Justice Department, was used to bring King from Selma to Montgomery following the rally.

Clark's statement brought a quick denial from a Justice Department spokesman in Washington.

Edwin Guthman, the department's information officer and one of Attorney General Robert F. Kennedy's right hand men, told The Advertiser that Felton Henderson, a Negro departmental staff member, picked up King at the Gaston Motel in Birmingham and drove him to the New Pilgrim Baptist Church in that city.

* * *

"HENDERSON NEEDED to interview King and the only chance he had was in driving him from the motel to the church," Guthman said.

"King got out of the car at the church and he did not go to Selma in that vehicle. The story to the contrary is absolutely false."

Guthman added that the car did not leave Birmingham Tuesday.

Informed of this denial Wednesday night, Clark replied:

"I personally saw King being driven into Selma in the Chevrolet rented by the Justice Department. As a matter of fact, I have four witnesses, travelling with me in two unmarked cars bearing Dallas County tags, who followed this vehicle for 8.2 miles on Highway 22 north of Selma right onto the grounds of the church where King spoke.

* * *

"I RECOGNIZED King as a passenger sitting on the right front seat of this car. A Negro man was driving the car and two other Negro men were on the back seat."

"In the confusion following the rally, we lost surveillance of the Chevrolet," the sheriff continued, "but we have information that he subsequently was transported to Dannelly Field in a 1961 white Ford Galaxie bearing license plates No. 3-100510. We have determined that this automobile was rented by Kenneth McIntyre from the Montgomery Hertz station at 3:55 p.m. Tuesday."

In further rebutting Guthman's denial, Clark said he also could produce witnesses who saw King being driven from Birmingham in the first car.

* * *

Gov. George C. Wallace, when informed of the matter, issued a statement in which he said he was "not surprised" that King was being transported by the Justice Department.

Said Wallace:

"I have been informed that Atty. Gen. Kennedy's Justice Department has provided Martin Luther King with transportation while he is in the State of Alabama. In fact, he has been travelling throughout the state in vehicles rented by the Justice Department.

* * *

"This is not surprising to me—but it is a matter which should be called to the attention of the people of this country. A racial agitator and troublemaker who has caused demonstrations to occur throughout the United States can now apparently travel at the expense of the U.S. government."

It was further learned that on at least one occasion the rented Chevrolet used by King was used by John Doar, one of the Justice Department's top civil rights attorneys. Doar has spent much time in Alabama in recent months, during the school integration developments.

A crowd of about 1,200 heard King's speech at the First Baptist Church in Selma, a city torn by disorder in recent weeks.

King urged the Selma Negroes continue their efforts to become registered voters.

T. 8-23-63

20530

BM:INT:rb
144-35-243

AUG 2 6 1963

[redacted]
Cambridge, Maryland

Dear [redacted]

Your recent communication to the President has been referred to this Department.

Your interest in writing to express your views is appreciated.

Sincerely,

BURKE MARSHALL
Assistant Attorney General
Civil Rights Division

By:
JOHN L. MURPHY, Chief
General Litigation Section

cc: Records
Chrono
Tranen

WA 873 NL PD

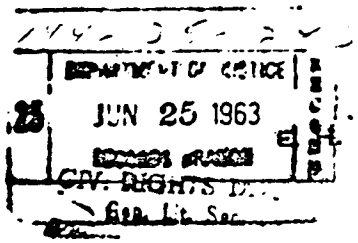
YORK PENN JUN 12

THE PRESIDENT

THE WHITE HOUSE

IN MY OPINION FEDERAL HELP NEEDED IN CAMBRIDGE MARYLAND RACE RIOTS. SITUATION COMPLETELY OUT OF HAND

[redacted] CAMBRIDGE MD.



JUL 12 1963

Form No. CVR-17
(Rev. 6-[illegible]-63) Civil [illegible]hts Division

FROM: MAIL AND DOCKET ROOM

( )~~Assistant Attorney General~~ (2)
( )First Assistant
( )~~Second Assistant~~
( )Trial Staff
( )_____
( )~~Chief, General Litigation Sec.~~
(1)Head, Const. Rts. Unit
( )_____
( )Chief, Appeals and Research Sec.
( )Federal Custody Unit
( )_____
( )Chief, Voting and Election Sec.
( )_____
( )_____

REMARKS:

NO DOCKET CARD

1-3-11

T. 6/12/63

BM:JLM:11h
144-35-243

JUN 13 1963

Mrs. Gloria Richardson
Chairman, Cambridge Non-Violent
Action Committee
Cambridge, Maryland

Dear Mrs. Richardson:

This is in reply to your telegram to the Attorney General advising of the possibility that violence may occur in Cambridge, Maryland, and requesting protection by the federal government.

The maintenance of law and order is primarily the responsibility of local law enforcement officials. In the absence of information indicating a general breakdown in law and order causing interference with the enjoyment or exercise of federal rights, this Department does not plan to intervene.

Should you have specific information reflecting violation of federal law, I would appreciate your advising me, and you may be sure appropriate action will be taken.

Sincerely,

BURKE MARSHALL
Assistant Attorney General
Civil Rights Division

Records
Chrono
Mr.Murphy

TELEGRAM
SPECIAL

PHONED

1963 JUN 12 PM 11:44

DEPARTMENT OF JUSTICE
ADMIN. RECORDS BRANCH
TELEGRAPH OFFICE

OWUB146 PB051

P CMA038 LONG PD CAMBRIDGE MD 12 1105A EDT

ROBERT KENNEDY

JUSTICE DEPT WASHDC

SIR, LAW ENFORCEMENT AGENCIES AVAILABLE IN THE CITY OF CAMBRIDGE AND THE STATE OF MARYLAND HAVE PROVEN INSUFFICIENT. THE POSSIBILITY OF VIOLANCE CONTINUES. THE STATE POLICE HAVE PROVEN AS INTOLERABLE AND PREJUDICE AS LOCAL POLICE. THEY ARE NO LONGER NEUTRAL ARMS OF THE LAW. THIS INCREASING DISPLAY OF PREJUDICE AND BIAS FROM THE POLICE HAS UNDERMINED THE NEGRO COMMUNITIES RESPECT FOR AND FAITH IN THEM. I PLEAD THAT THE FEDERAL GOVERNMENT PROVIDES PROTECTION FOR ALL, ESPECIALLY THE NEGRO COMMUNITY. AGAIN I EMPHASIZE THAT VIOLENCE HAS AND MOST LIKELY WILL OCCUR. THE PREVAILING CLIMATE IS SUCH THAT A STATE OF RIOT COULD OCCUR AT ANY SECOND, WITHOUT WARNING. I HOPE THAT YOU WILL FIND IT MORE EXPEDIENT TO ACT ON THIS REQUEST THAT

144-25-24

JUN 12 A.C.

CIV. RIGHTS DIV.
Gen. Lit. Sec.

YOU DID ON MY PREVIOUS REQUEST CONCERNING THE RETENTION OF TWO JUVENILES. THIS IS URGENT. PLEASE SENDIMMEDIATE REPLY

MRS GLORIA RICHARDSON CHAIRMAN CAMBRIDGE NON-VIOLENT ACTION COMMITTEE

(15).

1139A EDT JUN 12 63