

LRC1.6.8

No. 21,477

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA, APPELLANT

v.

DALLAS COUNTY, ET AL., APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

BRIEF FOR APPELLANT

BURKE MARSHALL
Assistant Attorney General,

VERNOL R. JANSEN,
United States Attorney,

JOHN DOAR,
HAROLD H. GREENE,
GERALD P. CHOPPIN,
Attorneys,
Department of Justice,
Washington, D. C. 20530



INDEX

	Page
Statement of the Case:	
I. Procedural History -----	2
II. The Evidence -----	5
A. General -----	5
B. Surveillance of the mass meetings -----	9
C. The arrest and trial of Bosie Reese -----	11
D. The arrest and trial of Bernard Lafayette -----	17
E. The arrest and trial of Alexander L. Brown -----	21
F. Evidence not allowed by the Court -----	23
III. Findings of Fact and Conclusions of Law -----	25
Statutory Provisions Involved -----	29
Specification of Error -----	29
Argument:	
I. Introduction -----	30
II. The Actions of Sheriff Clark were Intimidatory and Had as Their Purpose Interference with the Right of Negroes to Vote -----	31
A. The Surveillance of the mass meetings ---	32
B. The arrest of Bernard Lafayette -----	41
C. The arrest of Alexander Brown -----	46
D. The arrest of Bosie Reese -----	49

Page

III. The Actions of Blanchard McLeod were Intimidatory and had as their Purpose the Interference with the Right of Negroes to Vote -----	56
IV. The District Court Had Jurisdiction to Grant the Relief Requested in this Case -----	61
Conclusion -----	68
Appendix -----	69

CASES	Page
<u>Aelony v. Pace</u> , No. 530 (M.D. Ga. Nov. 1, 1963) -----	64
<u>Anderson v. City of Albany</u> , 321 F. 2d 649 (C.A. 5, 1963) -----	65
<u>Bailey v. Patterson</u> , 323 F. 2d 201 (C.A. 5, 1963), cert. denied, 376 U.S. 910 (1964) -----	65
<u>Bates v. City of Little Rock</u> , 361 U.S. 516 (1960) -----	36
<u>Beal v. Missouri Pacific Railroad Corp.</u> , 312 U.S. 45 (1941) -----	66
<u>Browder v. Gayle</u> , 142 F. Supp. 707 (M.D. Ala. 1956), <u>aff'd</u> 352 U.S. 903 (1956) -----	65
<u>Brown v. United States</u> , 204 F. 2d 247 (C.A. 6, 1953) -----	64
<u>Campbell v. Barsky</u> , 265 F. 2d 463 (C.A. 5, 1959) -----	55
<u>C.I.R. v. Duberstein</u> , 363 U.S. 278 (1960) -----	30, 54
<u>Cline v. Frink Dairy Co.</u> , 274 U.S. 445 (1927) ----	64
<u>Commonwealth Trust Company v. Smith</u> , 266 U.S. 152 (1924) -----	31
<u>Cooper v. Hutchinson</u> , 184 F. 2d 119 (C.A. 3, 1950) -----	64
<u>Culp v. United States</u> , 131 F. 2d 93 (C.A. 8, 1942) -----	64
<u>Douglas v. Jeannette</u> , 319 U.S. 157 (1943) -----	63, 66
<u>Fay v. Noia</u> , 372 U.S. 391 (1963) -----	65

Cases--Continued	Page
<u>Federal Trade Commission v. Rhodes Pharmacal Co.</u> , 191 F. 2d 744 (C.A. 7, 1951) -----	66
<u>Fenner v. Boykin</u> , 271 U.S. 240 (1926) -----	65
<u>Galena Oaks Corp. v. Scofield</u> , 218 F. 2d 217 (C.A. 5, 1954) -----	50
<u>Gibson v. Florida Legislative Committee</u> , 372 U.S. 539 (1963) -----	37
<u>Guzman v. Pichirilo</u> , 369 U.S. 698 (1962) -----	30
<u>Harkrader v. Wadley</u> , 172 U.S. 148 (1898) -----	63
<u>Henderson v. Burd</u> , 133 F. 2d 515 (C.A. 2, 1943) -----	66
<u>Leiter Minerals, Inc. v. United States</u> , 352 U.S. 220 (1957) -----	62
<u>Louisiana v. N.A.A.C.P.</u> , 366 U.S. 293 (1961) -----	36
<u>Mayo v. Pioneer Bank and Trust Co.</u> , 297 F. 2d 392 (C.A. 5, 1961) -----	50
<u>Morrison v. Davis</u> , 252 F. 2d 102 (C.A. 5, 1958) -----	65
<u>N.A.A.C.P. v. Alabama ex rel. Patterson</u> , 357 U.S. 449 (1958) -----	38
<u>Niles-Bement-Pond Company v. Iron Moulders Union</u> , 254 U.S. 77 (1920) -----	31
<u>N.L.R.B. v. Fruehauf Trailer Company</u> , 301 U.S. 49 (1937) -----	37
<u>N.L.R.B. v. Jasper Chair Company</u> , 138 F. 2d 756 (C.A. 7, 1943) -----	37
<u>Ponzi v. Fessenden</u> , 258 U.S. 254 (1922) -----	63

Cases--Continued	Page
<u>Sanders v. Leech</u> , 158 F. 2d 486 (C.A. 5, 1946) ---	55
<u>In re Sawyer</u> , 124 U.S. 200 (1888) -----	63
<u>Screws v. United States</u> , 325 U.S. 91 (1945) -----	64
<u>Shadid v. Fleming</u> , 160 F. 2d 752 (C.A. 10, 1947) -----	66
<u>Spielman Moter Sales Co. v. Dodge</u> , 295 U.S. 89 (1935) -----	64, 66
<u>Stefanelli v. Minard</u> , 342 U.S. 117 (1951) -----	63
<u>United States v. Atkins</u> , 210 F. Supp 441 (S.D. Ala., 1962) -----	5, 6
<u>United States v. Atkins</u> , 323 F. 2d 733 (C.A. 5, 1963) -----	6
<u>United States v. Gypsum Company</u> , 333 U.S. 364 (1948) -----	30, 54
<u>United States v. Kaplan</u> , 277 F. 2d 405 (C.A. 5, 1960) -----	55
<u>United States v. Wood</u> , 295 F. 2d 772 (C.A. 5, 1961), cert. denied, 369 U.S. 850 (1962) -----	4
<u>W.R.B. Corporation v. Geer</u> , 313 F. 2d 750 (C.A. 5, 1963) -----	30
<u>Wilson v. Schnettler</u> , 365 U.S. 381 (1961) -----	63

STATUTES AND RULES INVOLVED

	Page
18 U.S.C. 241-----	63
18 U.S.C. 242-----	63
28 U.S.C. 2283-----	62
42 U.S.C. 1971-----	5,61,62,63, 64,65,66
42 U.S.C. 1971(a)-----	65
42 U.S.C. 1971(b)-----	1,2,29,30,31, 52,54,65,66
42 U.S.C. 1971(c)-----	1,2,29
42 U.S.C. 1971(d)-----	65
42 U.S.C. 1983-----	65
14 Ala. 229-----	48
14 Ala. 437-----	27, 43
Federal Rules of Civil Procedure:	
Rule 43(c)-----	24
Rule 52(a)-----	54

MISCELLANEOUS

Selma Times Journal-----	41
--------------------------	----

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21,477

UNITED STATES OF AMERICA, APPELLANT

v.

DALLAS COUNTY, ET AL., APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

BRIEF FOR APPELLANT

STATEMENT OF THE CASE

This case involves the actions taken by some officials of Dallas County, Alabama, to stop a Negro voter registration drive by means of intimidation and coercion. This appeal is from the denial of a preliminary injunction sought by the government under the Civil Rights Act of 1957, 42 U.S.C. 1971(b) and (c).

I

Procedural History

On June 26, 1963, the United States filed its complaint with the United States District Court for the Southern District of Alabama under 42 U.S.C. 1971(b) and (c) against the defendants Dallas County, Alabama; James G. Clark, Jr., the Sheriff of Dallas County; Blanchard McLeod, Circuit Solicitor of the Fourth Judicial Circuit of Alabama; and Henry Reese, County Solicitor of Dallas County.^{1/}

The complaint charged that the defendants, by baseless arrests and prosecutions of Negro voter registration workers, by physical violence and by other means, had intimidated, threatened and coerced, and had attempted to intimidate, threaten and coerce Negro citizens of Dallas County for the purpose of interfering with their right to register to vote and to vote in federal elections (R. 5-8). The complaint prayed for a preliminary and permanent injunctive relief enjoining the defendants, their agents, servants,

^{1/} The Government later moved to dismiss Reese as a defendant for lack of evidence (R. 435).

employees, and all persons in active concert or participation with them from (R. 8-9):

- (a) Intimidating, threatening, coercing or attempting to intimidate, threaten, or coerce any person for the purpose of interfering with the right of that person or any other person to become registered to vote and vote in Dallas County, Alabama, for candidates for federal office, or punishing any person for having registered or attempted to register to vote and vote for any such candidate;
- (b) Striking, threatening to strike, arresting, threatening to arrest, holding in custody, prosecuting or attempting to prosecute any person in the Courts of the State of Alabama for the purpose of interfering with the right of any Negro citizen to become registered or to vote in Dallas County and to vote for candidates for federal office, or for punishment for having previously registered or voted, or engaging in any act or practice which would deprive any Negro citizen of Dallas County, Alabama of any such right or privilege;
- (c) Proceeding with the prosecution, failing to return the bond monies or release the sureties on the bond in connection with the prosecution of Bosie Reese in the courts of the State of Alabama on the charges for which he was arrested on June 17, 1963.

An application for a temporary restraining order to enjoin the prosecution of one Bosie Reese was denied by the district court (R. 74). Because the prosecution was imminent, the United States appealed from this denial on the same day and sought an injunction pending appeal that night. This Court, apparently influenced in part by the fact that the defendants had not had the opportunity to file affidavits to rebut those accompanying the application of the United States, thought the case to be distinguishable from United States v. Wood, 295 F. 2d 772 (C.A. 5, 1961), cert. denied, 369 U.S. 850 (1962) and denied relief.^{2/}

The hearing on the motion for a preliminary injunction began on July 25, 1963. A further hearing was held on October 15, 1963.^{3/}

^{2/} We then dismissed our appeal.

^{3/} At the first hearing evidence was introduced both by appellant and by appellees. Appellant desired an opportunity to cross examine persons who had testified in affidavit form for the appellees and to introduce rebuttal testimony. Stating that he was unable to devote more than one day to the hearing at that time, Judge Thomas recessed the hearing and set the case down for further hearing on October 3, 1963. Subsequently, in the context of civil rights demonstrations occurring in Selma, Judge Thomas continued the October 3 hearing

(continued on following page)

On March 19, 1964, the district court denied the government's motion for a preliminary injunction (R. 448).

II

The Evidence

A. General

Dallas County is located in the southwestern part of the State of Alabama, south of Birmingham, and immediately to the west of Montgomery. The 1960 population of Dallas County was 56,667. The largest city is Selma, which has a population of 28,385.

On May 2, 3, and 4, 1962, the trial of United States v. Atkins, et al. -- a voting discrimination case brought by the United States under 42 U.S.C. 1971 (a) -- was held in Selma. ^{4/}

3/ (continued from preceding page)

for resetting at a later date, stating that October 3 was not the time, nor Selma the place for the hearing. Appellant promptly filed a mandamus petition in this court to compel Judge Thomas to conduct the hearing forthwith. Judge Thomas then reset the hearing in Selma for October 15, 1963, and the mandamus petition subsequently was dismissed as moot on appellant's request.

4/ At the trial of the Atkins case the proof showed that between 1952 and December 1960, 4,500 white persons

(continued on following page)

In November 1962, the Dallas County Voters League, an organization of Negro voters of Dallas County whose purpose is to assist other Dallas County Negroes to become registered voters, invited Bernard Lafayette, a 22-year-old Negro and Field Secretary of the Student Nonviolent Coordinating Committee, to come to Selma for the purpose of organizing and supervising a voter registration drive of Dallas County Negro citizens (R. 28, 255, 373). Lafayette took up residence in Selma in February 1963, and remained there at least through July 25, 1963 (R. 158).

4/ (continued from preceding page)

and only 88 Negroes were registered, and that only 14 Negroes were registered from May 1954 to December 1960. United States v. Atkins, 323 F. 2d 733, 736 (C.A. 5, 1963). The proof also showed that from June 1961 until May 2, 1962, 480 white persons and 114 Negroes had applied to register. Of these, 443 of the white persons and 71 of the Negroes were registered. Id. at 737. On November 15, 1962, the District Court for the Southern District of Alabama held that proor registrars of Dallas County had engaged in a pattern and practice of discrimination and that the present board, which took office in June 1961, had not discriminated. The district court declined to issue an injunction except to order the present board of registrars to permit rejected applicants to reapply for registration. United States v. Atkins, 210 F. Supp. 441 (S.D. Ala., 1962). On September 30, 1963, this Court reversed and ordered the trial court to issue an injunction against the present board of registrars. 323 F. 2d 733 (C.A. 5, 1963).

In Selma, Lafayette devoted himself almost exclusively to voter registration activities. He organized and conducted voter registration clinics at which he and other Negroes taught prospective registrants how the Dallas County Board of Registrars desired the Alabama application for registration to be executed (R. 196, 256, 261-262). He organized door-to-door canvasses of the Negro residential districts in which workers urged unregistered Negroes to attend the clinics and to attempt to register to vote. He helped to plan and to participate in voter registration mass meetings at which speakers came to talk about voter registration and civil rights in general (R. 198, 256). And he arranged for the production and distribution of mimeographed handbills and leaflets which urged the desirability of the exercise of the franchise by Negro citizens (R. 164; plaintiff's exhibits 14, 15, 16).

The activities of Lafayette and the members of the Voters League were successful. The clinics, which were begun on January 29, 1963, attracted a substantial number of potential applicants (R. 30; plaintiff's exhibits 3, 4 and 50). The mass meetings, the first of which was held on May 14, 1963, attracted sizeable

audiences. The summer of 1963 was a period of unprecedented voting registration activity on the part of Negroes in Dallas County (R. 353, 403, 407).

This increased activity on the part of the Negroes and particularly on the part of Lafayette and his workers did not go unnoticed in the white community. The Selma Times-Journal carried news accounts of the mass meetings, the trials and tribulations of Lafayette and his workers, and at least one advertisement of the White Citizens Council soliciting new members to prevent, inter alia, "wholesale Negro voter registration efforts in Selma" (plaintiff's exhibits 18-28; R. 282).

The activities with which this lawsuit is concerned followed. For the sake of clarity, we have divided our discussion of the relevant evidence into four major topics: (1) police activities in connection with Negro meetings; (2) the arrest and trial of Bosie Reese; (3) the arrest and trial of Bernard Lafayette; and (4) the arrest and trial of Alexander Brown.

B. Surveillance of the mass meetings

Sheriff Clark had deputies present at every civil rights mass meeting of which he had knowledge^{5/}, including the meetings of May 14, 1963; June 24, 1963; July 8, 1963; July 15, 1963; and July 17, 1963 (R. 105). At every one of the meetings, upon instructions from the Sheriff, the deputies took notes and they also broadcast a running commentary over walkie-talkies (R. 107, 151, 205-206, 319-320; Plaintiff's Exh. 37, 38^{6/}-42). On cross examination by counsel for the defendants, Sheriff Clark revealed that he also had members of his several-hundred-man posse present (R. 98). Additionally, the Sheriff instructed his deputies to take down the license tag numbers of all cars in the vicinity of the meeting and he looked up the tag numbers to see to whom they belonged (R. 151-152^{7/}).

5/ Selma Police Chief Mullen stated that police officers were also present at meetings of the White Citizens' Council, but the police did not take notes during those meetings of what went on (R. 334).

6/ A typewritten copy of the notes that were taken at the July 8, 1963 meeting is set out in the appendix to this brief at pp. 68-84. The deputies also made a tape recording of the May 14, 1963 meeting, but it was illegible.

7/ Pleasant L. Lindsey, a 69-year-old Negro and resident of Selma since 1926, testified that as soon as he drove up, two of the Sheriff's deputies with a flashlight and a walkie-talkie took his license tag number. This happened at the second meeting on June 17, 1963 (R. 266-267).

The Sheriff said that he had deputies inside the meetings because of "unrest" at the first meeting (R. 107), and "to see if they were going to start any demonstrations or riots in the church and come outside" (R. 135). But there never was any talk of violence at any of the meetings (R. 211).

A different explanation was given by Blanchard McLeod, the Circuit Solicitor. Mr. McLeod testified^{8/} that he sent the Sheriff and his men to the meetings because of certain information he had received from an FBI agent. This agent, according to McLeod, told McLeod that Bernard Lafayette had wired the Department of Justice that all of the Sheriff's force had left town, that fighting dogs had been imported, and that whites had been armed to prevent the meeting (R. 296). (Presumably the officers were to be present to prevent this kind of violence.) On further questioning, McLeod modified his story, however, stating that he was not so sure the FBI had told him that Lafayette had sent the wire. Moreover, he refused to reveal who had informed him that Lafayette had called the Department of Justice (R. 298),

^{8/} Mr. McLeod was himself present at the May 14, 1963 meeting.

and the court did not require him to answer (R. 298^{9/}).
Lafayette himself denied calling upon the Department
of Justice for protection (R. 184, 195).

C. The arrest and trial of Bosie Reese

On June 17, 1963, Bosie Reese, a 19-year-old
Negro resident of Selma, Alabama, who had been working
in the voter registration drive that summer, was ar-
rested by Sheriff James G. Clark, Jr. in the Dallas
County Courthouse and charged with failure to obey an
officer and with resisting arrest (R. 17, 112; Plain-
tiff's Exhibits 1 and 2).

Bosie Reese testified at his trial^{10/} that he had
been sent to the Dallas County Courthouse on June 17,

^{9/} Edwin L. Moss, a Negro resident of Selma, Alabama,
and a member of the Dallas County Voters League and
other civic organizations in Selma (R. 235-236), had
gone to see the Chief of Police of Selma prior to the
first mass meeting held by the Dallas County Voters
League on May 14, 1963 to ask Chief Mullen whether in
his view it was necessary to have police officers pre-
sent at the meeting to give protection against violence
(R. 247). The Chief apparently assured Moss that the
meetings would be protected (R. 247). There was no dis-
cussion of note-taking, license tag notations, walkie-
talkies, or other surveillance of those present at the
meeting (R. 247).

^{10/} The circumstances of the arrest of Bosie Reese are
found in Plaintiff's Exhibit 6 (the transcript of the
trial in the Dallas County Court) and in the testimony
of Sheriff James G. Clark, Jr. at the hearing on the
preliminary injunction in this case. Sheriff Clark
stated in the hearing on July 25, 1963, in the court
below, that the testimony he gave at the trial of Reese
in the state court was correct (R. 119).

1963, by Bernard Lafayette to check on Negroes coming to register (R. 74-75). A Negro man and a white lady were standing in the registration line when Reese and his friend, Alexander L. Brown, went up to the man and began to converse with him (R. 77). Brown took a picture of the man after obtaining the man's permission (R. 75, 85).

According to Sheriff Clark he arrested Bosie Reese because Reese came back into the courthouse after the Sheriff had ordered him out (P. Ex. 6, Tr. 62). The Sheriff said that it had been his practice not to allow loitering around lines which formed in front of offices in the hall of the courthouse and that he asked loiterers to leave because they clogged the thoroughfare (P. Ex. 6, Tr. 66). There were, however, no signs to this effect; it is an "unwritten rule" that no one molests lines in the courthouse (R. 113). The presence of "some kids" going up and down the registration line asking questions and talking to people in the line was called to the attention of the Sheriff that morning. No one in the line directly complained to the Sheriff nor was Reese identified as one of the "kids" asking questions (P. Ex. 6, Tr. 57-58). Seeing Reese standing in the hall, the Sheriff went up to him and asked him who he was. Reese told him, and, upon request, produced identification.

The Sheriff asked him what his purpose was there and Reese said that he was checking on the line and was waiting on a friend.^{11/} The Sheriff then told Reese that he did not allow any loitering around the registrars' line and that Reese should leave the courthouse immediately. Reese walked toward the front door of the courthouse, the Lauderdale Street entrance, and the Sheriff returned to his office.^{12/}

Reese left the courthouse and waited for Alexander Brown, his friend and another of Bernard Lafayette's Negro registration workers (P. Ex. 6, Tr. 76). After ascertaining that Reese had been told to leave the courthouse by the Sheriff, Brown announced that he was going back into the courthouse to continue working (P. Ex. 6, Tr. 93). Reese accompanied Brown

^{11/} The Sheriff also asked Reese what he was doing with a camera and Reese told the Sheriff that it belonged to a friend of his and that he was waiting for his friend to return.

^{12/} This is the account of what transpired according to Sheriff Clark's testimony (P. Ex. 6, Tr. 52). Reese's account of the conversation was substantially the same (See R. 19 (affidavit of Reese executed June 24, 1963); (P. Ex. 6, Tr. 76). The only discrepancy is that the Sheriff testified that at the time he first spoke to Reese there were about 10 people in the registration line (R. 116, P. Ex. 6, Tr. 67). Reese said that there was no line (P. Ex. 6, Tr. 77).

back into the courthouse and they took seats at the rear end of the courthouse near the probate court (Reese's affidavit, R. 19; P. Ex. 6, Tr. ^{13/}94). A white man who did not identify himself to Reese and Brown came and talked to them and told them that they were loitering and had to leave (P. Ex. 6, Tr. ^{14/}95).

The second time the Sheriff saw Reese, Reese was between the door to the Sheriff's office and the front door of the courthouse (Alabama Street entrance) (P. Ex. 6, Tr. 60-61). Reese and Brown were then about

13/ When he testified at the state court trial, Reese stated that he and his friend talked to the Negro man in the registration line at this time (P. Ex. 6, Tr. 77). According to Reese's affidavit and the testimony of Alexander Brown, this event occurred earlier, prior to the Sheriff's conversation with Reese (R. 18; P. Ex. 6, Tr. 92).

14/ This was apparently Marion A. Butler, Clerk of the County Board of Revenue and custodian of the courthouse, who testified that he saw Reese and another person sitting in the chairs which were customarily reserved for persons having business with the probate court, and told them to leave the courthouse (P. Ex. 6, Tr. 15). Butler said that he did not identify himself to Reese and his companion, but that "they were just as nice as they could be, they got up and said they would leave" (P. Ex. 6, Tr. 17). Butler last saw them walking down the hall toward the exit of the courthouse (P. Ex. 6, Tr. 16). There are no signs identifying the chairs in which Reese and Brown sat as reserved for the probate court (Id.).

to exit (P. Ex. 6, Tr. 80, 95-96). The Sheriff told Reese, "come go with me." There is a dispute about who, if anyone, used force at that point. The Sheriff said he had to pull Reese into the Sheriff's office (P. Ex. 6, Tr. 58, ^{15/}53). Reese, on the other hand, said that not only did he not hold back or strike at the Sheriff (P. Ex. 6, Tr. 80, 81), but that the Sheriff hit him over the head three times, punched him in the stomach two times, in the side once, and kicked him in the chest (P. Ex. 6, Tr. 81; see also R. 20).

Eventually, Reese was prosecuted for failure to obey an officer and resisting arrest. ^{16/}The charge was changed at the judge's direction to "conduct likely to provoke a breach of the peace." Motion for a directed

^{15/} The Sheriff's testimony on Reese's alleged effort to resist arrest is not completely consistent. In answer to a question by counsel for Reese as to whether Reese struck the Sheriff, the Sheriff answered that Reese had "made effort to." Subsequently, in answer to a question by the court, the Sheriff stated that Reese had struck at him with his hands (P. Ex. 6, Tr. 56, 68).

^{16/} The Sheriff said that he did not tell Reese that he was under arrest until after he was inside the Sheriff's office (P. Ex. 6, Tr. 59). The Sheriff testified that he had to use force to get Reese all the way down to the basement of the office (P. Ex. 6, Tr. 54).

^{17/}
verdict was denied, and the court also refused to hear
testimony offered by the defense regarding the purpose
behind the arrest of Reese.^{18/} Reese was found guilty of
what the court called "for the purpose of brevity" "the
disturbing of the peace warrant." On this offense,
Reese was fined \$50 and costs. The court also found
him guilty of resisting arrest and for that offense
fined him \$150 and costs (P. Ex. 6, Tr. 107-108).

^{17/} The judge stated at that time (P. Ex. 6, Tr. 72-
^{73/}):

The court takes judicial knowledge of
the fact that there has been certain
tension between the races, certain
acts have gone on that have made
people tense, and for that reason I
think possibly that things, acts which
ordinarily would not be considered a
breach of the peace might be considered
a breach of the peace under the circum-
stances that now exist.

^{18/} On this, the court said (P. Ex. 6, Tr. 103):

I am not going to allow that line of
testimony in here. If you had had num-
bers and numbers of cases of this type
in this County, why it would be a dif-
ferent thing, but this is the first case
we have had where anybody has been ar-
rested in the Courthouse for disturbing
the peace.

D. The arrest and trial of Bernard Lafayette

On June 18, 1963, Bernard Lafayette, Jr. was arrested by Sheriff James G. Clark, Jr. on a charge of vagrancy. He was acquitted of this charge on June 20, 1963 (P. Ex. 3).

According to Sheriff Clark^{19/}, who executed the affidavit supporting the warrant for the arrest of Lafayette, the basis of the arrest was that the Sheriff had "reports, numerous reports, that he (Lafayette) was not gainfully employed" (R. 57, 123). These "reports" were telephone calls (R. ^{20/}58), but there was no written record.

The Sheriff did know Lafayette by "reputation" (R. 56-57); he also knew that Lafayette was a representative of an organization from Atlanta, but had no "official notice" of it (R. 59). The Sheriff testified that he had probed into Lafayette's background to find out whether or not there was some organization that paid him a salary, but did not meet with any success (R. 61). The Sheriff did not contact any organization because he

^{19/} The Sheriff testified in the hearing of this case and at the state trial. This statement relates his testimony at the two hearings.

^{20/} Judge Thomas would not permit inquiry into the source of the alleged reports (R. 123).

"knew of no official organization to contact" (R. 61). The Sheriff stated that he had inquired of people who knew Lafayette to find out if Lafayette was employed anywhere and that he "understood" that Lafayette "was a volunteer worker for that association by his own statement" (R. 61).

The Sheriff also said that he had reports that Lafayette was "begging" for money (R. 125), but he did not know whether Lafayette was begging for himself or his cause (R. 60).

The Sheriff did not interview Lafayette after Lafayette was arrested and prior to the trial and his only further investigation after the arrest consisted of "inquiries to people" which produced no evidence that Lafayette was "gainfully employed" (R. 129-130). The Sheriff did not ask any Negroes what Lafayette was doing because he "thought it would be a waste of time" (R. 131).

The Sheriff had known about Lafayette prior to June 18, 1963, by way of reports from the Federal Bureau of Investigation and the Alabama State Department of Investigation (R. 110). The FBI told the Sheriff that Lafayette represented the Student Nonviolent Coordinating Committee (R. 110). The Sheriff said that the State Department of Investigation told him that Lafayette

was working "trying to organize the niggers" (sic) (R. 111). The Sheriff also talked to Lafayette himself on the afternoon of June 17, 1963, and at that time the Sheriff knew who Lafayette was and that Lafayette was connected with the Student Nonviolent Coordinating Committee (R. 127).

Blanchard McLeod, the state prosecutor at Lafayette's trial, testified that while he knew Lafayette prior to the arrest and trial, he did not know for whom Lafayette was working (R. 293). McLeod did know, however, that Lafayette "was in here for the purpose of trying to get--working with the Negroes and things of that nature. * * * But those he was working for I had no more idea. You all know because you all sent him down here" (R. ^{21/}302). McLeod did not try to find out for whom Lafayette was working because he was "not interested" (R. 302-303). He said that he knew about the case only the afternoon before the trial, at which time he talked to the Sheriff or one of his deputies who told him that they "could not find anything" where Lafayette was gainfully employed (R. 303).

21/ McLeod said that he did not even know the name of the Student Nonviolent Coordinating Committee, until Lafayette took the stand at his trial on June 20, 1963, although he had "seen it in the paper" (R. 302).

On the morning of the trial in state court, Lafayette's attorneys conferred with McLeod concerning a continuance. According to McLeod, he told Lafayette's attorneys that if they could prove to him that Lafayette was gainfully employed, he would nol pros the case (R. 288, 301). When Lafayette's attorneys said they didn't know whether Lafayette was gainfully employed, he proceeded with the trial (R. 289, 301). Solomon Seay, one of Lafayette's attorneys, denied that McLeod had said anything to him about proving that Lafayette was gainfully employed or about a nol pros of the case. (R. 375-377). In fact, Seay knew that Lafayette was working in Dallas County with the Dallas County Voters League as a field representative for the Student Nonviolent Coordinating Committee (R. 373).

Deputy Sheriff Charles H. Webber, who arrested Lafayette, claimed that he asked Lafayette whether or not he was employed and Lafayette informed him that he "was an Evangelist and was working with the Dallas County Voting Registration" (R. 51). The deputy knew about Lafayette from articles which had appeared in the newspaper (R. 54). He searched Lafayette at the jail and found that Lafayette had \$27.75 in cash in his pocket (R. 55).

Bernard Lafayette testified in his State court trial that he was employed by the Student Non-violent Coordinating Committee to work with the Dallas County Voters League and was paid professional and operational expenses by the Committee (R. 67-68). He further testified that his rent was paid in advance, that he owed no bills in Selma, and that he purchased his own groceries (R. 66-67).

At the conclusion of Lafayette's testimony, the presiding judge stated that the defense had proved that Lafayette had a livelihood (R. 72). Prosecutor McLeod agreed and acknowledged that he had nothing further, whereupon the court entered a finding of not guilty (R. 72).

E. The arrest and trial of Alexander L. Brown

On July 22, 1963, Sheriff Clark arrested Alexander L. Brown, one of Bernard Lafayette's co-workers, because one of the high beams on Brown's automobile headlights was not working (R. 143, ^{22/}156). Clark asked Brown for his name and Brown supplied it; but when he asked Brown for his driver's license and

22/ Clark was observing one of the Negro voter registration meetings at the time.

Brown supplied it, the Sheriff noticed that the license had been issued to one Alexander Lionel Love (R. 143-144). Because of this discrepancy, the Sheriff at once arrested Brown on a charge of concealing his identity (Plaintiff's Exhibit 4; R. 144). Brown was also charged with having improper lights on an automobile (R. 146). The Sheriff testified at the federal court hearing that he did not know who was in the automobile when he stopped it, but stated that he knew of Brown before the arrest, knew that Brown was working with Lafayette, and knew that Brown had testified at the trial of Bosie Reese (R. 131, 147). Brown testified that the Sheriff asked about the discrepancy between the license and the name given him by Brown, but when Brown attempted to explain, the Sheriff "cut me off, saying he would talk or see me later" (R. 222). Brown went on to explain that he was born Alexander Lionel Love, but the Sheriff called for a deputy and had Brown taken to jail (R. 222).

At the jail Brown again tried to explain (to a deputy), but the deputy interrupted his explanation by stating "you niggers (sic) are known to have a lot of names. Its just like that common law marriage you have" (R. 223). Brown offered to show identifying cards,

including a birth certificate, but the deputy refused to look at them (R. 224-225; see Plaintiff's Exhibit 33).

At the federal court hearing, Brown said that he had lived with his grandmother, Hattie Brown, since he was about 3 days old and that her name was the one he was taught to use, but when he applied for his driver's license on April 3, 1963, he was required to furnish a birth certificate and did furnish the certificate showing his name as Alexander Lionel Love (R. 225-226).

Brown was tried on the charge of concealing identity on August 1, 1964. He pleaded not guilty (R. 367) and was acquitted (plaintiff's exhibit ^{23/}48).

F. Evidence not allowed by the Court

All of the above-mentioned events were brought out at the hearings on the motion for preliminary injunction in the instant case. Beyond that, during the October 15, 1963, hearing, the government offered to show events which had occurred during the period from July 25, 1963, to October 15, 1963, and a request was made for an amendment of the pleadings. The court refused the proffered testimony, and refused to allow

^{23/} Brown was convicted on the charge of not having lights (plaintiff's exhibit 49).

the pleadings to be amended (R. 313-315; 396-399) but an offer of proof under Rule 43(c), F. R. Civ. P., was made. This showed the following events.

(1) Some 29 Negroes who were attending a mass meeting on July 29, 1963, were arrested by members of the Sheriff's office for improper license tag lights.

(2) 27 Negroes who were picketing in front of the courthouse with voter registration signs were arrested on September 25, 1963, and charged with unlawful assembly and inciting a riot and their bonds were set at either \$500 or \$1,000^{24/}.

(3) Five Negroes were arrested in front of the courthouse on September 27, 1963, on charges of inciting a riot and unlawful assembly. Their bonds were set at either \$500 or \$1,000.

(4) Five Negroes were arrested on October 1, 1963, by Sheriff Clark when they were parading across the street from the courthouse, in front of the federal building, also on charges of unlawful assembly and inciting a riot^{25/}.

^{24/} In all of these cases and the following cases the Negroes carried their signs in a peaceful manner and there were no crowds or no disturbance whatsoever.

^{25/} On October 2, 1963, two or three Negroes were permitted to carry signs on federal property and were there a substantial part of the day and were not arrested.

(5) On October 7, 1963, over 200 Negroes were lined up to register, but Sheriff Clark required them to stay in line all day and did not permit them to leave the line, without losing their place even to go to the bathroom or get another pair of shoes or get something to eat. The Sheriff arrested two Negro students who tried to bring food to the people who were standing in the line.

(6) Three Negro pickets who were standing on federal property with signs urging all citizens to register to vote were arrested on October 7, 1963, by Sheriff Clark and charged with unlawful assembly and inciting a riot. .

III

Findings of Fact and Conclusions of Law

On March 19, 1964, the district court denied the motion for a preliminary injunction (R. 448). In an "Opinion with Findings of Fact and Conclusions of Law," Judge Thomas discussed, in turn, the attendance of Sheriff Clark and his agents at the mass meetings and the arrest of Reese, Lafayette, and Brown.

The court found that, owing to a feeling of unrest in Selma, the Sheriff felt it to be his duty, and that it was his duty, to be in attendance at the mass meetings, and that the Sheriff and his men had

rerouted out-of-county cars containing white men away from the vicinity of the meetings. The court expressed the opinion that this rerouting "was perhaps the difference between order and disorder" (R. 442).

The district court found that Bosie Reese was "molesting the voter registration line and that he was requesting information of persons therein, some of whom refused to divulge such information" (R. 443), and that this was in violation of an "unwritten" rule that no person will be allowed to "molest" any line within the courthouse. This "rule" was found to have been established in the exercise of the Sheriff's responsibility to control the lines of people which form in the courthouse for various purposes, e.g., to purchase automobile tags (R. ^{26/}443). When Sheriff Clark informed Reese that he was loitering and ordered him to leave the courthouse, the Sheriff, according to the court, acted "well within the authority conferred on him as Sheriff" (R. 443). The court cited Sheriff Clark's testimony that when Reese returned to the courthouse, Clark arrested him for failing to obey the lawful order of

^{26/} The court noted that the unwritten rule was one "of long standing and there can certainly be no serious contention that such rule should have been in writing and posted" (R. 443).

an officer. The court further stated that there was a presumption that Reese was afforded a fair trial on the subsequent charges of resisting a lawful arrest and conduct calculated to provoke a breach of the peace, and a presumption that the evidence warranted both the arrest and conviction (R. 443-444).

With respect to the arrest of Lafayette, the court cited testimony by Sheriff Clark that Clark had received reports from his deputies and from informers that Lafayette had been begging, and that on such information he had executed an affidavit which formed the basis for the warrant on which Lafayette was arrested.^{27/} The court also found that subsequent to the arrest and before trial, inquiries by Sheriff Clark had failed to produce any evidence that Lafayette was gainfully employed, and observed that in the opinion of the state trial court the prosecution had made out a prima facie case of vagrancy which was then averted by the defendant on a showing that he was in fact gainfully employed by the Student Nonviolent Coordinating Committee. The Court noted that Blanchard McLeod, the prosecutor, had

^{27/} The court noted that among those described as vagrants in Title 14, Section 437 of the Code of Alabama is any person who is found begging.

agreed with the trial court that Lafayette had averted the state's prima facie case, and Judge Thomas found that Sheriff Clark "did in fact have probable cause for believing that Lafayette was a vagrant", and that "so believing it was his duty, in his capacity as Sheriff, to initiate such process as required to bring Lafayette before the court to be tried on a charge of vagrancy" (R. 444-445).

With respect to the arrest of Alexander Brown, the court stated that both Brown's testimony and the testimony of Sheriff Clark showed that Brown was arrested while driving an automobile with one headlight. At the time of the arrest Brown had a drivers' license in the name of Alexander Love, while at the same time he was going under the name of Alexander Brown, and in fact when asked by the Sheriff at the time of the arrest, gave his name as Brown. The court further cited Sheriff Clark's testimony that he did not know the identity of the driver of the automobile at the time it was stopped. (R. 445).

The court accordingly was of the opinion that the United States had "failed in its proof" (R. 446).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. 1971(b) provides:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories, or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

42 U.S.C. 1971(c) provides:

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

SPECIFICATION OF ERROR

The district court erred in holding that the United States had failed in its proof and in denying the injunction sought by the United States.

ARGUMENT

I

Introduction

42 U.S.C. 1971(b) provides in pertinent part that: "No person . . . shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote" in federal elections. The finding by the district court that the United States failed in its proof that the appellees had violated 42 U.S.C. 1971(b) was clearly erroneous, and the failure to grant preliminary^{28/} injunctive relief^{29/} constitutes reversible error.

^{28/} The relief sought here should have been granted even though this was a proceeding for a preliminary injunction. Cf. United States v. Fox, No. 20398 (C.A. 5), decided July 21, 1964. A full evidential hearing was held in the district court, taking two trial days--July 25, 1963 and October 15, 1963--and extending over a period of almost three months. At this hearing the appellant put on 26 witnesses and introduced over 50 exhibits; appellees called three witnesses and also introduced affidavits of twelve others. The court thereafter, on March 19, 1964, entered detailed findings of fact, conclusions of law, and its judgment denying a preliminary injunction. In short, the district court disposed of all issues, both factual and legal, involved in the case. Upon the basis of its legal conclusions no different result could be reached after a trial on the merits. Indeed, the hearing on the motion for preliminary injunction was, in essence, a trial on the merits.

^{29/} Although no specific argument against Dallas County is set out in our brief, there is no question but that the county is an appropriate defendant in this case.

(Continued on following page.)

II

The Actions of Sheriff Clark were Intimidatory and Had as Their Purpose Interference with the Right of Negroes to Vote

The evidence in this case clearly shows that the activities of Sheriff Clark and his deputies at the mass meeting, and the manner and circumstances of the arrest of Bosie Reese, Bernard Lafayette and Alexander Brown represented attempts on his part to intimidate Negroes for the purpose of interfering with their right to vote and as such were in violation of 42 U.S.C. 1971(b) and should have been enjoined thereunder. See United States v. Wood, 295 F. 2d 772 (C.A. 5, 1961), cert. denied, 369 U.S. 850 (1962),

29/ (Continued from preceding page.)

Appellees did move to dismiss the county as a defendant (R. 83), but the district court denied this motion at the same time that it denied the appellant's relief (R. 447) and there was no cross appeal.

Beyond that, the county has committed its full resources to defending the conduct of its officials here involved. The county, of course, is a proper defendant for remedial purposes, and it is clearly settled that entities from which relief is sought are to be made parties, whatever the extent of their participation in the wrongdoing. Commonwealth Trust Company v. Smith, 266 U.S. 152 (1924); Niles-Bement-Pond Company v. Iron Moulders Union, 254 U.S. 77 (1920).

A. The Surveillance of the Mass Meetings

Law enforcement officials of course have an important duty to furnish protection, where necessary, to those attending public gatherings. Such officials may also have power, where called upon to do so, to assure the maintenance of law and order on the occasion of such gatherings.

But the Sheriff and those acting under his direction clearly were not there to provide protection for the Negroes attending the meetings or to assure the maintenance of law and order. The evidence shows unequivocally that the principal activity engaged in by the Sheriff and his deputies was to intimidate the Negroes so as to deter them from engaging in voter activities. These law enforcement officers engaged systematically in at least three practices which did not have and which could not conceivably have had any reasonable relationship to legitimate protective or enforcement aims and which, instead, could have only been undertaken

to intimidate those persons present at the meeting or contemplating attendance at them for the purpose of stopping such meetings and thus further curtailing Negro voter registration.

1. The officers openly recorded the license plate numbers of cars parked at and in the vicinity of the mass meetings. This activity was admitted, and the Sheriff made only a half-hearted attempt to justify this activity. He stated that he took down the tag numbers of "some white men from Chilton County, who were there observing" (R. 153). The fact is, however, that the Sheriff and his men did not simply take the license 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" (R. 153). They even made a record of the license plate numbers of the cars which were parked in the parking lot of the churches in which the mass meetings were held (R. 26, 34, 266-267). Nor was there any effort on the part of the Sheriff and his deputies to perform this task in a discreet manner. As Pleasant L. Lindsey, 69-year-old Negro resident of Selma, testified, he had no sooner stepped out of his car upon arriving at the mass meeting of June 17, 1963, than two of the Sheriff's deputies came over to his car with a flashlight and a walkie-talkie and broadcast his license number (R. 267).

One would have to be more than naive to believe that this was anything but a crude attempt to intimidate.

In compiling a record of the names of the Negro citizens who were attending the voter registration meetings and in making it known to these Negroes that this is precisely what he was doing, the Sheriff could have had no other purpose than to discourage Negroes from attending such meetings and thus end the Negro voter registration drive. There can be no doubt as to the effect of this activity upon the Negro community. The Sheriff must have known what effect this massive identification program would have in a community in which, like many other southern communities, the economic status of most Negroes is dependent upon the sufferance of a white employer or a white purveyor of goods and services.^{30/}

2. Law enforcement officers were very much in evidence at the Negro meetings. The presence of these obviously hostile uniformed officers inside the meetings could only have had and can only have been known to have had an intimidatory effect. The officers, moreover, were not simply stationed inside the meetings as observers. In addition to an unsuccessful attempt

^{30/} The court would not permit witnesses to answer whether Negroes were dependent upon whites for jobs in Selma (R. 354, 430), but before objection was made, Amelia P. Boynton testified that Negroes in Dallas County did depend upon whites for jobs (R. 408).

to tape-record one of the meetings (R. 152) one or more of them were assigned the task of making a written record of the events which occurred and the speeches which were made (R. 107, 151, 205, 206; P. Ex. 29-32). Indeed, the deputies not only recorded the substance of what was said by the speakers (taking careful note whenever voting or registration was mentioned (see Appendix, pp. 70, 71, 72, 74, 81, 84, infra)), but also identified those present, helpfully providing such additional potentially useful information as the name of the person's employer (see Appendix, pp. 69, 76, infra), a stray license number (p. 74, infra), and a reminder to "investigate" "Reese Billingsley" (Id.). To top it all off, law enforcement officers made a contemporaneous broadcast of the Negroes' meetings to police officials outside by means of a walkie-talkie (R. 26, 35, 107, 151). The contrast with police activity in connection with White Citizens' Council meetings is startling.^{31/}

3. Short of forcibly interfering with the conduct of the meetings or preventing them from occurring at all, it is difficult to imagine a more intimidatory mode of

^{31/} At the October 15, 1963, hearing, Chief of Police Mullen, who worked "in close harmony and accord with the Sheriff's department" (R. 328), conceded that while police were furnished to observe for protection at meetings of the Citizens Council (R. 331), notes were not

(continued on following page)

behavior than that engaged in by the Sheriff and his men. In a closely related context, the disclosure by the National Association for the Advancement of Colored People of lists of their members resident in certain states, such as Alabama, Arkansas, Florida, and Louisiana,^{32/} has been recognized by the Supreme Court as being an "effective . . . restraint on freedom of association" (NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 462 (1958)). Surely the presence of the Sheriff, his deputies, and his posse, their compilation of license tags and notes and their broadcasting of the information from the voter registration meetings was and could only have been intended to be a similar restraint.

In Bates v. City of Little Rock, 361 U.S. 516, 423 (1960), it was emphasized that "freedoms such as these ["freedom of speech and free press, the right of peaceable assembly . . . freedom of association for the purpose of advancing ideas and airing grievances"] are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference."

31/ (Cont. from preceding page.)

taken at such meetings (R. 334). Notes taken by police officer W. D. Nichols at the Negro voter registration mass meetings of June 17, June 24, July 1, July 8, July 15, and July 22, 1963, are in evidence (see P. Ex. 37 and 39-42).

32/ Louisiana v. NAACP, 366 U.S. 293 (1961).

It is significant that courts have recognized that surveillance of a group by unfriendly or unsympathetic persons^{33/} in an analogous situation, namely employer-union animus, may create "suspicion, unrest and confusion" (NLRB v. Fruehauf Trailer Company, 301 U.S. 49 (1937) (spy for employer made list of union members and employer used list to warn employees not to join or participate in union activity)), or at the very least, is an indication of hostility to union membership or activity (NLRB v. Jasper Chair Company, 138 F. 2d 756, 758 (C.A. 7, 1943)). In cases such as these the National Labor Relations Board and the courts have decided that such surveillance is an unfair labor practice. No less so is it true here that the mere surveillance of the meetings by a Sheriff known to be hostile to the voter registration drive was deterrent enough to Negroes wishing to participate in these

33/ Cf. Gibson v. Florida Legislative Committee, 372 U.S. 539, 557 (1963), quoting from NAACP v. Button, 371 U.S. 415, 435 (1963) (Virginia):

We cannot close our eyes to the fact the militant Negro civil rights movement has engendered the intense resentment and opposition of the politically-predominant white community.

meetings, without being enhanced by the recordation of license plates, the note-taking, and the broadcasting.

As the Supreme Court summarized it in NAACP v. Button, supra, "these [First Amendment] freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. Cf. Smith v. California, supra, at 151-154; Speiser v. Randall, 357 U.S. 513, 526."

There was absolutely no legitimate purpose to the aforementioned activities on the part of the Sheriff. Any legitimate apprehensiveness about the outbreak of a disturbance at the meetings could have been satisfied by surveillance alone. The presence of the Sheriff and his white deputies recording in detail every word and action at the meeting and listing those in attendance could only have been intended to demoralize the Negro members of this rural community and thus to discourage them from further voting rights activity.

The Sheriff's deputies actually continued their conspicuous note-taking at the voter registration meetings, even though they were well aware that such activity was unnerving to the speakers whose task it was to exhort Dallas County Negroes

to overcome their fears and register to vote (see Appendix, pp. 72, 76, 82, ^{34/}infra).

The wonder is not that these activities took their toll on Negro registration activities, 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, five on July 2 and none thereafter (R. 87-90; P. Ex. 34, 35, 50). The clinics were suspended after July 15, 1963 (P. Ex. 35).

Not only does the evidence show clearly that there was intimidation or an attempt to intimidate, but it also shows that the purpose of these intimidatory acts was to interfere with the Negro voter registration drive. The Sheriff and his men could hardly have been oblivious to the fact that these meetings were the key to the efforts by civil rights leaders of Dallas County to encourage Negroes in that county to register to vote. The note-taking and walkie-talkie coverage

^{34/} Maxine Ruffin, Negro resident of Selma, said that she told the state investigator who took her affidavit for appellees that the presence of the deputy Sheriffs at the mass meetings made her "nervous" (R. 382).

of these meetings by the deputies leaves no doubt but that the Sheriff (and Blanchard McLeod, who listened to the broadcasts) knew that Dallas County Negroes active in the Negro voter registration drive led these meetings and that Negro voter registration was the central theme of the speeches. This knowledge, coupled with the awareness that these activities were having an intimidatory effect, leads inescapably to the conclusion that the acts were done for the prohibited purpose of interfering with Negro voter registration.

B. The Arrest of Bernard Lafayette

There is no question whatever but that when Sheriff Clark executed the affidavit and warrant for Bernard Lafayette's arrest on June 18, 1963, on the charge of vagrancy, Clark knew who Lafayette was, the date he had come to Selma, and the type of work in which he was engaged.

The Sheriff talked to Lafayette himself on the afternoon of June 17, 1963 (concerning the arrest of Bosie Reese) and at that time he knew who Lafayette was and that he was connected with the Student Non-violent Coordinating Committee (R. 127). The Sheriff testified that the FBI had told him that Lafayette represented the SNCC and the Alabama State Department of Investigation had told the Sheriff that Lafayette was working "trying to organize the niggers" [sic] (R. 110, 111^{35/}). And, of course, the Sheriff and his deputies were present at the mass meeting of May 14, 1963, at which Lafayette was a speaker (P. Ex. 29).

^{35/} The Sheriff had also talked to the City of Selma regarding Lafayette (R. 111) and there appeared in the Selma Times Journal of May 15, 1963 (p. 1) and June 12, 1963 (p. 10) stories describing Lafayette as a representative of the SNCC (P. Ex. 18 & 20).

The report of the Sheriff's deputies at the May 14, 1963 meeting makes it unmistakably plain that the meeting was concerned primarily with voter registration and that Bernard Lafayette was organizing and urging general Negro voter registration.^{36/} Despite this, the Sheriff testified that he did not know at the time of Lafayette's arrest that Lafayette was working on voter registration (R. 128). Indeed, this disclaimer itself -- in the face of the clear evidence to the contrary -- indicates forcefully the Sheriff's purpose.

There was, of course, no possible legitimate justification for the Sheriff to order the arrest of Lafayette for vagrancy. In the first place, the Sheriff was unable even to make up his mind as to what

^{36/} See Plaintiff's Exhibit 29, notes taken by Boone Aiken, Deputy Sheriff: Reverend Bernard Lafayette said that "The coming Monday, the third Monday, the registrar's [sic] office will be open. I want every Negro 21 years and up to go down there and register to vote. Voting is our security." Notes taken by Francis Pace, Deputy Sheriff: "Bernard Lafayette, approximately 30 years old, spoke several times during the meeting. His talks were inflammatory and inciting. The theme of the entire meeting was to get Negroes to the polls Monday to register to vote." Notes taken by Virgil Bates: "Every few minutes he (Lafayette) would urge all to come to the courthouse Monday 5-20-63 and register." See also R. 59 (Transcript of trial in Alabama v. Lafayette).

it was that constituted Lafayette's vagrancy. At times the ostensible basis of the offense was that Lafayette was not gainfully employed (R. 123, 56-57). At other times, however, the gravaman of the offense consisted in Lafayette having begged for money (R. 125, ^{36A/}60). Manifestly, there was no basis for either accusation.

As to the claim that Lafayette was not gainfully employed, the chief justification advanced by the Sheriff for believing it to be true was that he had received numerous telephone reports to that effect from unnamed, unremembered persons (R. 123, 57-58). The Sheriff testified that he had probed into Lafayette's background to find out whether or not there was some organization that paid him a salary, but did not meet with success (R. 66). Yet the Sheriff had to acknowledge that he did not contact any organization (because he "knew of no official organization to contact" (R. 61)), nor did he ask any Negroes what Lafayette was doing (because he "thought it would be a waste of time" (R. 139)). The Sheriff did not bother to question Lafayette himself about this, either on the afternoon before the arrest (when he spoke to Lafayette (R. 129, 127)), or after the arrest.

^{36A/} Lafayette was prosecuted under 14 Ala. Code 437 (1958 Recomp.) which is set out in the Appendix to this brief at p. 86-87, infra.

As to the charge that Lafayette's vagrancy consisted of begging for money, this reduces itself to a report allegedly received by the Sheriff that Lafayette had been begging for money on June 17, 1963 (R. 62-63, 126-127). It is evident that the "begging" occurred at the June 17, 1963 mass meeting (R. 63, 126-127). The Sheriff said he did not know whether Lafayette had been "begging" money for his own personal needs or for a cause. "I know nothing but begging for money," he said (R. 60). That, apparently, was good enough for the Sheriff even though he knew that Lafayette was in charge of the mass meeting at which funds had been solicited for voter registration activities (R. 59; Report of Deputy Bates, P. Ex. 29), and even though he must have known -- what any reasonable man surely knows -- that fund solicitations are necessary to support the expenses of any such sustained educational and civic undertaking.

If the claim that there was any sufficient cause to justify the Sheriff's execution of the affidavit and warrant for Lafayette's arrest strains credulity, the circumstances surrounding the arrest of Lafayette fare no better. To begin with, Lafayette

had \$27.75 in his possession when arrested by Deputy Sheriff Webber (R. 55). Then, when Webber asked Lafayette whether he was employed, Lafayette responded that he was indeed working for the Dallas County Voters League (R. 68). Deputy Webber understood Lafayette to have said that he was working with "the Dallas County Voting Registration" (R. 51) and Deputy Webber apparently chose to construe this as proof that Lafayette was unemployed because he, Deputy Webber, knew that Lafayette was not an employee of the Dallas County Board of Registrars (P. Ex. 6, Tr. 52). This explanation was so flagrantly disingenuous in the context of the situation in Dallas County, that it was an obvious fabrication.

In short, one would have to close one's eyes to reality to believe that Lafayette's arrest under the circumstances was anything but a clumsy intimidatory device. Of course, the Sheriff and his men knew Lafayette was directing a voter registration drive. Of course, they knew that his "begging" was an appeal for funds in connection with that drive. The almost comical attempts of the Sheriff and his men to avoid hearing the truth underline their bad faith. The only reasonable

conclusion that may be drawn from the actions of these officers was that they acted as they did to interfere with and frighten Lafayette, thereby to impede the voter registration drive.

Official coercion of the sort engaged in by the Sheriff is so reprehensible and so subversive of our representative system of Government and our constitutional liberties and the facile fabrications of the Sheriff and his men were so implausible that the court below grievously erred in refusing to recognize the Sheriff's actions for what they obviously are--an attempt to intimidate Negroes who seek to exercise their right to vote.

C. The Arrest of Alexander Brown

The circumstances surrounding the arrest of Alexander Brown on a charge of concealing his identity are, if anything, even less credible than those are which are supposed to have justified Sheriff Clark in arresting Lafayette.

While observing a Negro mass meeting on July 22, 1963, the Sheriff stopped the car which Brown was driving because only one headlight was working

(R. 143, 156). When the Sheriff asked him his name, Brown replied: "Alexander Brown." When the Sheriff requested Brown to produce his driver's license, Brown produced it. As soon as the Sheriff saw that it was issued in the name of Alexander Lionel Love, he promptly and summarily, and without further explanation or inquiry, placed Brown under arrest and had him sent to jail, on a charge of concealing his identity (P. Ex. 4; R. 143-144).

We know what the Sheriff did not do. He did not ask to see any other identification, although Brown had at least five other means of identification on his person at the time (R. 225; P. Ex. 33). He did not ask to see Alexander Brown's birth certificate, although Brown had a copy of it with him (R. 223). He asked Brown about the discrepancy between the two names, but cut Brown off when Brown attempted to explain, telling Brown that he would talk to him or see him later (R. 222). When Brown attempted to explain the discrepancy to the Deputy Sheriff who took him to jail, he met with a comparable lack of success (R. 223).

We also know what the Sheriff knew at the time he arrested Alexander Brown. He knew that a voter registration mass meeting was in progress

within a block of the arrest. He knew, too, that Alexander Brown had been working for Bernard Lafayette (R. 131). And he knew, for another thing, that Brown had testified as a witness for the defense at the trial of Bosie Reese (R. 131).

Brown's explanation -- which he had been ready to offer to anyone who cared to listen -- was simply that he had been born Alexander Lionel Love, but had been reared 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 drivers' license, the license was made out in the name of "Love" (R. ^{36b/}226).

^{36b/} Brown's explanation is particularly significant in light of the language of the criminal statute under which he was charged, 14 Ala. Code 229 (1958 Recomp.), which provides:

Any person who changes or alters his or her name with the intent to defraud or with the intent to avoid payment of any debt, or to conceal his or her identity, shall be guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not more than five hundred dollars (emphasis added).

Thus, even though the discrepancy between the last names on Brown's birth certificate and his driver's license might indicate a change of name, more than that is needed before it can in good faith be assumed that the change was effected by Brown in order (1) to defraud, (2) to avoid payment of debt, or (3) to conceal his identity.

This explanation resulted in his acquittal of the charge (P. Ex. 48).

If the Sheriff had not been so determined to arrest and thereby to intimidate Brown, he would have considered the explanation when it was first offered.

D. The Arrest of Bosie Reese

Bosie Reese was convicted of "disturbing of the peace warrant" (P. Ex. 6, Tr. 107-108)^{37/}. There was no evidence whatever that, at the time of his arrest,^{38/} Reese was disturbing the peace. He was then simply leaving the courthouse. Earlier that day, according to the Sheriff, Reese had been "molesting" the voter registration line, but he was not arrested at the time

^{37/} He was also convicted of resisting arrest, but this alleged resistance arose out of the obviously improper and intimidatory arrest and thus is subject to the same infirmities.

^{38/} Actually, Reese was not breaching the peace or violating the law at any time. At the time of their first meeting, if the Sheriff is to be believed, Reese and his companion were standing near the voter registration line. A picture was taken--apparently not by Reese but by Brown (P. Ex. 6, Tr. 75, 85)-- of a Negro man who gave his consent (R. 413) but no picture was taken of the white woman who was standing in the line and who had not consented (P. Ex. 6, Tr. 86). This picture-taking, and a short conversation with the Negroes in the line was apparently the extent of the heinous activities of the two Negroes that morning. As far as the second encounter with the Sheriff is concerned, Reese has indicated he was not even near the registration line and was leaving the courthouse at the time. Indeed, when the probate court custodian, Marion A. Butler, told him to leave "they were just as nice as they could be, they got up and said they would leave" and Butler next saw them walking toward the exit (P. Ex. 6, Tr. 16, 17, 18).

of that incident. The Sheriff himself did not think that Reese was disturbing the peace at the time of his arrest, for he arrested him not for that offense but for failing to obey the Sheriff's order (P. Ex. 6, Tr. 52, 62; R. 112). Another explanation given by the Sheriff for the arrest was that Reese was "standing close to the [voter registration] line" (R. 115). But at the time of the arrest Reese was not even near the voter registration line. Even if the Sheriff is to be believed, Reese may have been standing close to the line during their first encounter but during their second meeting Reese was in front of the Sheriff's office about 100 feet from the registration door, without any indication that Reese was having anything to do with the line (P. Ex. 6, Tr. 60-^{39/}~~61~~). The Sheriff also offered several more explanations in the form of "unwritten rules" which Reese supposedly violated. One of these "rules" is that loitering is not allowed in

^{39/} With all the deference that is due to factual findings made by trial courts, the finding that Reese was molesting the line (R. 443) is so obviously wrong that it need not, and should not be, accepted by this Court. Compare Mayo v. Pioneer Bank and Trust Co., 297 F. 2d 392, 395 (C.A. 5, 1961), where this Court held that appellate review is far broader "when the factual determination is primarily a matter of drawing inferences from undisputed facts or determining their legal implications" than when disputed questions of evidence or credibility are involved. See also, Galena Oaks Corp. v. Scofield, 218 F. 2d 217, 219 (C.A. 5, 1954).

the halls of the courthouse (P. Ex. 6, Tr. 66); another that no one is allowed to molest lines in the courthouse (R. 113). But again, by the Sheriff's own story, Reese was not doing any of those things at the time of his arrest. At most, Reese might have been violating these "unwritten rules" on the first occasion; he certainly did not do so at the time of his arrest. It is significant, too, that the court which convicted Reese did so only after recognizing that Reese's actions "ordinarily would not have been considered a breach of the peace" but "might be considered a breach of the peace under the circumstances that now exist"--that is because of the fact --of which "the court takes judicial knowledge . . . that there has been a certain tension between the races" (P. Ex. 6, Tr. 72-73).

If anything is clear from these thoroughly confused and contradictory explanations and rationalizations offered at various times to justify the arrest and conviction, it is that the Sheriff had made up his mind that Reese had to be arrested, prosecuted and convicted on some charge or other, under some pretext or other. The reason for this peculiar species of law enforcement is not difficult to discern. Sheriff Clark knew that Bosie Reese was at the courthouse on June 17, 1963, for the purpose of engaging in work related to voter registration (P. Ex. 6, Tr. 52, 76; R. 19). The arrest,

under the circumstances, could not but have been for the purpose of intimidation in connection with the voter registration drive--a clear violation of 42 U.S.C. 1971(b). In short, acting in accordance with a pattern which manifests itself in each arrest, the Sheriff made the arrest without seeking an explanation of any sort from the person arrested (see P. Ex. 6, Tr. 58) and without seeking in any bona fide way to determine whether the person arrested had engaged in conduct which justified arrest. Under such circumstances it is evident that the Sheriff's purpose was deliberately to interfere with legitimate voter registration activity.

When viewed in the context in which they occurred, the three arrests which were made by Sheriff Clark exhibit strikingly similar characteristics and patterns. 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 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 he could act with impunity.

What is even more significant, 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 did not matter that Reese was not doing anything with 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. In Alexander Brown's case, it was enough that Alexander Brown's name did not match the name on his drivers' 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 to draw any conclusion other than that in making each of these arrests the Sheriff's 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 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 42 U.S.C. 1971(b).

The adherence by this Court to the "clearly erroneous standard" of Rule 52(a) F.R. Civ. P. is no obstacle to reversal of the district court in this case, even though Judge Thomas spoke as one "who has lived in and is familiar with the environment wherein the evaluation is to be made" (R. 441). In United States v. Gypsum Company, 333 U.S. 364, (1948), the Supreme Court held: "the finding is 'clearly erroneous' when although there is evidence to support it the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Accord, Guzman v. Pichirilo, 369 U.S. 698 (1962); C.I.R. v. Duberstein, 363 U.S. 278 (1960). This Court has held that the clearly erroneous concept of Rule 52(a) of the Federal Rules of Civil Procedure "requires findings to be set aside if the court is left with the impression that the result is not the truth and right of the case." W.R.B. Corporation v. Geer, 313 F. 2d 750 (C.A. 5, 1963).

Reversal here clearly meets the standards set forth by this Court in Sanders v. Leech, 158 F. 2d 486, 487 (C.A. 5, 1946), and followed in many cases since, because (1) "the findings are without substantial evidence to support them;" (2) the court below "misapprehended the effect of the evidence;" and (3) even though there might be evidence, which, if credible would be substantial, "the force and effect of the testimony considered as a whole convinces that the finding is so against the preponderance of the credible testimony that it does not reflect or represent the truth and right of the case." See also, United States v. Kaplan, 277 F. 2d 405, 408 (C.A. 5, 1960). In short, the result of the district court's failure to enjoin the appellees clearly leaves one "with a conviction that injustice has been done" Campbell v. Barsky, 265 F. 2d 463-466 (C.A. 5, 1951).

III

The Actions of Blanchard McLeod were
Intimidatory and had as their Purpose
the Interference with the Right of
Negroes to Vote.

Appellant McLeod was and is Circuit Solicitor of the Fourth Judicial Circuit of Alabama, a post which he has held for the past ten years, (R. 292). A "proud" member of the White Citizens Council of Wilcox County, Alabama, (R. ^{40/}295) he prosecuted each of the three persons arrested by Sheriff Clark: 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 involvement of the accused in local voter registration activity. In such circumstances, the only reasonable inference which can be drawn is that McLeod's purpose in pursuing these

^{40/} McLeod also testified that he was a member of the Dallas County Citizens Council when it was first organized, but is not now a paying member (R. 295).

prosecutions was simply to give continued impetus to the intimidatory purpose and effect of the Sheriff's antecedent arrests.

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 (R. 292). Then, even though the case was not finally heard until July 11, 1963, no investigation was made by McLeod during that three-week period (R. 292). This was the case despite the fact that as a result of the complaint and the application for a temporary restraining order to enjoin the prosecution of Reese, filed by the appellants on June 26, 1963, McLeod surely knew that there was some question that Reese had been arrested because of his voter registration activities (R. 74). The complaint alleged the facts of Reese's arrest on June 17, 1963, alleged that the detention arrest and prosecution of Reese was without legal justification and was for the purpose of intimidating, threatening, and coercing Negro citizens of Dallas County from applying for registration to vote (R. 7). The relief sought by the complaint included the restraint of the

prosecution of Bosie Reese (R. 8-9). The motion for a preliminary injunction contained the same request for relief (R. 11). Attached to the application for a temporary restraining order was the affidavit of Bosie Reese, and which he outlined in detail the circumstances of his arrest on June 17, 1963 (R. 17-22^{41/}).

With respect to the prosecution of Lafayette, McLeod was present in the vicinity of the May 14, 1963 mass meeting; he knew the meeting was concerned with voter registration; and he knew of Lafayette's involvement in the meeting and the voter registration drive (R. 293, 296, 298, 302). Despite this knowledge, McLeod "was not interested" either before or after Lafayette's arrest in learning by whom Lafayette was employed (R. 302-303). Indeed, the only explanation offered by McLeod was that he offered not to prosecute Lafayette's case if Lafayette's attorneys would tell

^{41/} That McLeod knew about the allegations in the Government's complaint is evident not only from the fact that he was a party to the injunction action, but also by the prior reference to a possible injunction by counsel for Reese at the hearing in Alabama v. Reese on June 20, 1963 (P. Ex. 6, Tr. 2) and, too, McLeod's obvious awareness of the Government's injunction suit at the June 27, 1963 hearing in Alabama v. Reese (P. Ex. 6, Tr. 5).

him that Lafayette was gainfully employed (R. 288, 301). According to McLeod, Lafayette's attorneys replied that they did not know (R. 289, 301). McLeod's testimony on this point was not only flatly and unequivocally denied by Solomon Seay, one of the attorneys (R. 375-377), but this denial is strongly corroborated by the fact that Seay knew that Lafayette was working with the Dallas County Voters' League as a field representative of S.N.C.C. (R. 373).

The same studied effort not to learn facts which might exonerate the civil rights workers was made in the case of Brown.

Brown's arrest took place on July 22, 1963. His trial did not occur until August 1, 1963. In the interim, and in particular at the hearing on the preliminary injunction in this case 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 Brown was guilty of concealing his identity in violation of Alabama law. For, despite the fact that Brown, while testifying under oath at the July 25 hearing, had fully explained the discrepancy between the name he uses and the name which appears on his drivers license (R. 226),

testimony which was corroborated by appellant's introduction into evidence of the eight identifying documents which Brown had in his wallet at the time of his arrest (P. Ex. 33), and despite the fact that McLeod was present throughout the entire hearing, McLeod pressed on one week later with the prosecution of Brown for this offense (see P. Ex. 48). The evidence, in short, 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 use the mechanism of the criminal prosecution and the sanctions of the criminal law as a means by which to intimidate further those persons who had been actively working on behalf of Negro voter registration.

IV

The District Court Had Jurisdiction to Grant the Relief Requested in this Case

The relief sought in this case is to enjoin the appellees from continued interference with the voter registration drive by, inter alia, the arrest and prosecution of voter registration workers without good cause or for insufficient cause for the purpose of interfering with voting rights; i.e., under circumstances similar to those disclosed by the evidence in this case. The district court clearly had the power to grant this relief under the authority of United States v. Wood, 295 F. 2d 772 (C.A. 5, 1961), cert. denied, 369 U.S. 850 (1962).

1. In Wood, the United States brought an action under 42 U.S.C. 1971 to enjoin the criminal prosecution of John Hardy, a Negro voter registration worker, before a Justice of the Peace in Walthall County, Mississippi. Two days before the trial was to commence, the United States sought to enjoin the prosecution on the theory that the continued prosecution of Hardy was designed to intimidate qualified Negroes in their attempts to vote. The district court denied the motion for a temporary restraining order. On appeal,

this Court reversed. Although recognizing the general rule that state criminal proceedings may not be enjoined by a federal court, this Court properly held that the rule did not apply in that case. Moreover, since the United States, rather than a private party, was seeking the injunctive relief, 28 U.S.C. 2283^{42/} had no application. Leiter Minerals, Inc. v. United States, 352 U.S. 220 (1957).

This Court further stated that the policy against interference with state criminal proceedings, which applies even where Section 2283 does not, was outweighed by the federal interest asserted by Congress in passing Section 1971 of the Civil Rights Act. Examining the language and legislative history of the Civil Rights Act of 1957, the Court concluded that the district court was "not operating under common law equitable and discretionary doctrines, but under a mandatory jurisdictional statute. * * * Where a federal statute has specifically created a cause of action for preventive relief for intimidation, it may no longer be said that this intimidation

^{42/} "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

will not be judicially recognized for the purpose of establishing an equitable cause of action." 295 F. 2d at 783, 784.

2. Cases brought under 42 U.S.C. 1971 are not controlled by the usual principles supporting the federal judicial practice of non-interference with state criminal proceedings.^{43/}

a. The legislative history of section 1971 clearly demonstrates that Congress intended to permit equitable relief in those situations susceptible to action under the criminal civil rights statutes.^{44/} One situation reached by the criminal statutes was the

^{43/} The federal judicial practice of non-interference with state criminal proceedings stems from two principles. The first is that a court of equity should not invade the domain of the common law court whose function it is to grant relief in criminal proceedings. In re Sawyer, 124 U.S. 200, 211 (1888); Harkrader v. Wadley, 172 U.S. 148 (1898). The second is that in a federal system of two sovereignties, each court system must respect the functions of the other in order to avoid undue conflicts. Wilson v. Schnettler, 365 U.S. 381 (1961); Stefanelli v. Minard, 342 U.S. 117 (1951); Douglas v. Jeannette, 319 U.S. 157 (1943); Ponzi v. Fessenden, 258 U.S. 254 (1922). But, as the Wood decision carefully points out, actions brought under 42 U.S.C. 1971 are not controlled by either of these principles.

^{44/} 18 U.S.C., sections 241, 242.

prosecution of persons on false charges or for an ulterior purpose. See Culp v. United States, 131 F. 2d 93, 99 (C.A. 8, 1942); Brown v. United States, 204 F. 2d 247, 249 (C.A. 6, 1953); Screws v. United States, 325 U.S. 91, 126 (1945) (concurring opinion of Mr. Justice Murphy); United States v. Wood, supra, at 781-782. Thus the Congress, in enacting section 1971, deliberately gave equity courts a role in the domain traditionally occupied by common law courts, thereby overriding any customary relationships previously governing courts of law and equity.

b. Underlying the principle of comity between state and federal courts is the notion that, since the decision of the state court is subject to ultimate review by the Supreme Court, the state judicial system should be permitted to complete its function undisturbed by premature interference by the federal courts.^{45/}

Spielman Motor Sales Co. v. Dodge, 295 U.S. 89, 95-96

^{45/} The decisions frequently distinguish between threatened criminal proceedings and criminal proceedings already begun by a state court, holding that only in the former instance may a federal court enjoin them. (Unless, of course, a federal suit on the same subject matter is already pending.) See Ex parte Young, 209 U.S. 123, 162 (1908); Cline v. Frink Dairy Co., 274 U.S. 445, 453 (1927). But see the recent decision of a three-judge court in this circuit, Aelony v. Pace, No. 530 (M.D. Ga., Nov. 1, 1963); Cooper v. Hutchinson, 184 F. 2d 119 (C.A. 3, 1950).

(1935); Fenner v. Boykin, 271 U.S. 240, 244 (1926).

But this doctrine of withholding federal action until state processes have been exhausted is a rule of comity, "not a rule distributing power as between the state and federal courts." Fay v. Noia, 372 U.S. 391, 425 (1963). Thus, it may at any time be abrogated by Congress. This is precisely what was done when 42 U.S.C. 1971 was enacted.^{46/} Subsection 1971(b) provides: "The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law." Whatever might be the requirements of comity under other statutes, it is clear that subsection 1971(d) permits federal courts to give equitable relief under Section 1971 even

^{46/} This Court and the district courts of this Circuit have held that the rule of non-interference in state criminal proceedings was also abrogated when Congress passed another civil rights statute, 42 U.S.C. 1983. Morrison v. Davis, 252 F. 2d 102 (C.A. 5, 1958); Browder v. Gayle, 142 F. Supp. 707 (M.D. Ala., 1956), aff'd, 352 U.S. 903 (1956). See also Anderson v. City of Albany, 321 F. 2d 649 (C.A. 5, 1963); Bailey v. Patterson, 323 F. 2d 201 (C.A. 5, 1963), cert. denied, 376 U.S. 910 (1964).

in matters still pending before state courts and certainly as well as to threatened future prosecutions. United States v. Wood, ^{47/}supra, at 784.

3. We do not ask in this case that the sheriff and the prosecutor be prohibited from arresting Negroes or voter registration workers when such arrests are

^{47/} The cases frequently give two other reasons for not interfering with state criminal proceedings. Neither is applicable to a suit brought under Section 1971. The first is that irreparable injury has not been demonstrated. Spielman Motor Sales Co. v. Dodge, supra; Douglas v. Jeannette, supra. But, as the Wood decision indicates, all that must be proved in a Section 1971(b) suit is that the statute has been violated, i.e., that there has in fact been intimidation. Congress, in enacting the statute, has made the determination that a violation of it constitutes irreparable injury. Furthermore, it is settled that when a plaintiff seeks injunctive relief pursuant to statutory authority, there is no requirement that irreparable injury be proved. Federal Trade Commission v. Rhodes Pharmacal Co., 191 F. 2d 744 (C.A. 7, 1951); Shadid v. Fleming, 160 F. 2d 752 (C.A. 10, 1947); Henderson v. Burd, 133 F. 2d 515 (C.A. 2, 1943).

Secondly, it has been held that no citizen is immune from prosecution, in good faith, from alleged criminal acts even though the prosecution may be unauthorized. Douglas v. Jeannette, supra; Watson v. Buck, 313 U.S. 387 (1941); Beal v. Missouri Pacific Railroad Corp., 312 U.S. 45 (1941). But an action under Section 1971 to enjoin state criminal proceedings presupposes that the criminal proceeding was brought in bad faith.

valid and necessary for the fair and impartial enforcement of valid and non-discriminatory state and local laws. We seek merely to end such practices as were here brought out so clearly in the evidence, whereby the badge of state authority is used as a cover for squelching the Negroes' desire to become registered to vote. No valid principle of constitutional enforcement of the laws could excuse the harassing surveillance of the meetings, the arrests without pretext and the unfounded prosecutions brought to light here.

CONCLUSION

The record in this case clearly demonstrates that the United States is entitled to an injunction against the appellees to restrain them from their continued acts of intimidation. Therefore, we respectfully submit that the decision of the district court be reversed and that court be directed to grant the relief sought herein.

BURKE MARSHALL
Assistant Attorney General.

VERNOL R. JANSEN,
United States Attorney.

JOHN DOAR,
HAROLD H. GREENE,
GERALD P. CHOPPIN,
Attorneys,
Department of Justice,
Washington, D. C. 20530

SEPTEMBER 1964.

APPENDIX

Plaintiff's Exhibit 31

[Handwritten notes of Deputy Virgil Bates and two unidentified persons concerning July 8, 1963, Negro mass voter registration meetings. Note that Bates reports that he was accompanied by Deputies William Averette and "Cotton" Nichols.]

Cotton Nichols, Bill Averette & I walked into the Tabernacle Church, Lafayette asked us why we were there, after I explained that we were there for their protection as well as anything else, he commented that was fine & he said we were Welcome.

7:37 P.M. The White Priest is here, sitting middle ways among the congregation.

Faces I recognize,

Earnest Carter from Beloit, c/m

Mary Byrd, c/f Philpot Ave.

Bosie Reeves

Harrison, works for Ben Miller

Boynton c/f

Lawson c/m

Hoss Griffin, North Weaver St. "the same young buck that has heckled us before" he is staying on other side of church

7:45 P.M. Boynton opens, songs of Freedom

7:50 P.M. approx. 100 here 1/3 teen age.

Freedom song, hand clap, feet stomp.

Lafayette left church for approx 20 min.

J. L. Chesnut goes on stage,

Douglas L. Pope introduced

We are here in full force, we are not afraid, I fought in the war for freedom, was glad to serve, will serve again if needed.

Very little applause from his talk.

8:06 P.M. Bible reading & prayer.

Basing talk from bible, the time will come when there will be no black boys, no white boys, only people.

At this time a small girl gets up & recites a poem about black man fighting for country & freedom.

black men are human like every one.

Applause aplenty.

8:18 P.M. typical negro singing.

Rev. Anderson on stage takes seat.

Pope, voter Registers appeal, by - Henry Shannan.

(Soloman Seay is here on Stage)

Shannan, I want to be free, you may not want to, but I do.

Preaching from bible, using freedom for background, Went to war to fight, especially for Ala, traveling & fighting for America, fighting for citizenship, have not gained it yet. I am not satisfied, I don't think you are. Lets move, lets move to court house of Dallas County.

Work in office & get paid by tax payers.

8:30 P.M. Song.

White priest going on Stage.

Hand Clap & foot stomp.

Marie Foster c/f up.

First class citizens council, Negro has no voice in Federal Gov. who are Negroes? Negroes are human beings, where does Negroes come from?

Negroes come from God.

Negroes have wanted freedom for a long time. Slavery has been in one form or another for a long time. Negroes fought at Bunker Hill, is a Negro some body?

Should he be respected? 450,000 black men serving their country in past War. there is still black men serving. Negro, have confirdence in your self, you are some body.

8:45 P.M. Pope up.

We shall sing out this time for some one who will represent us in Montgomy, Ala. (Meaning Soloman Seaye)

Song - Money time now. Pope gave \$5.

(Gildersleeve said 400 here)

8:50 P.M. Shannan up.

All who want to be free hold up hands, (All did)

Collection time. All coming forward. laying down bill money. Small children are donating.

James Austin up, from Talladegda.

Wounded for freedom,
people are afraid of loosing jobs.

When the white people decide to let us Vote, thats when we decide to spend our money with them,

Negro girl go to town, she want soda pop. She can't get it cause Mr. Carter say, white only.

(Not too much talk about registering to Vote)

Pope, up. We should support Mr. Chesnut. Chesnut up.

I am nervous Sheriff, you back there taking notes on what I say. Seaye came over here because he is decacated, (All stood up & applauded)

(Chesnut reads bible)

Black men grow up & lirn to fight for freedom, but still they are denied of their rights.

(Chesnut is realy living it up)

(freedom is main topic, no slurs against wht people)

Seaye is up.

there are rights we must fight for. (he is reading from a prepared speech)

Must not let no law stop us.

let no man stop us from our fight for freedom.

the cross has been on our back too long. (urgeing not to fear the wht people)

Now is the time not to fear any one.

(Seaye's talk is not going over to big) he is using words that they do not understand.

No applause.

Rev Anderson up.

Cammending white preist for coming & being with them.

takes a lot of courage to come & sit where he is sitting.

Negro has what it takes to close up every Store in town.

You can have good Jobs.

the Sheriff you see back there, you can have his Job, & you can have his boss's Job, the Mayor's Job, even the Govonars Job.

You have the power in your pocket.

(One Negro in rear said out loud, "Close them up"

I live in Selma, intend to stay here we can win. because we can
out love the white man.

Anderson threwed some very straight slurs towards the white
people.

9:40 P.M. Lafayette up.

Negro's in Selma & Dallas County want to be free,

Next stop Loundes County.

Killing us wont stop us, we are not afraid to die. the same
night that Evers got killed, I was beat up here in Selma.

You all should rember the first meeting here at this very same
church, we talked about the high cost of freedom, killings &
beatings is part of it.

The sheriff, Jim Clark don't intend for Negro's to be free
in Dallas County.

he spoke of a Negro that was killed & brought in tied an
a car like a dead deer.

(this happened serveral yrs ago)

When Negro's stop drinking beer I know they want to be free.

All this means only one thing

we must stick together.

Young men, you dont need knives

you have a greater sword.

Come to each mass meetings

come if you are sick, bring everybody.

Browns chapel next Monday Night.

[These notes are in different handwriting from the preceding.]

7:50 p.m. 75 to 80 inside

7/8/63

Black 59 Cat  350429

Preast Oullet Oullet (Priest)

sitting in audience tonight

Boynton's wife leading song.

Douglas L. Polk master of ceremony tonight

Pope fought in service & will fight again for freedom of people.

Reese Billingsley - investigate

8:05 p.m. 125-140 niggers [sic] inside.

There is no Black water, no white water, no black seats, no white seats, all the same.

Girl 11-12 yrs old. Why keep us down & kick around because of color of skin and all of our souls are the same. If you are capable of walking down the side walk - regardless of the color of your skin, you are good as anyone.

P.L. Pope - Beloit - calls for voter registration. Was reg where he came from & was refused here, he brought cert back & was still denied.

Henry Shannon - Appealing for reg. Went to W.W. II & fought for Ala & for Dallas Co. & especially for Dallas Co. fo citizenship that he did not gain

I'm not satisfied & I don't think you are sat. Let's move to the court house, lets work in the offices & get paid by the tax payers.

Oulette moved to the pulpit.

Foster woman - Who are negroes, where did they come from.

They are human beings, they come from God's creations.

Slave mothers would smother their infants so they would not grow up to be slaves.

Who represents the negroes, & why should the negroes be rep in Washington.

450,000 negroes fought for their country & are still fighting and are not being represented. Why aren't they represented - they should be represented as a human being.

8:45 P.M. - 200 - (3/4 are kids.)

We will sing a song esp. for someone to represent us in mtgy. He's got the whole world in his hand.

Shannon -

Gildersleeve gave count - 350 - 400

All that wants to be free hold up their hand & practically everyone did.

Took up collection --

Ernest Carter (Beloit) Zach? Harrison works for Miller funeral home.

Not satisfied with amount of pot and and herded them down front and to put in pot

James Austin, product from Selma in talladega now showed how he was beaten. You are Beaten & arrested if you go to vote so we stay at home. If we don't go down town and spend our money with them, they can't spend theirs.

You can't go into Mr. Carters drug store because it says "White only." Negroes in audience, "Amen, tell em more."

We have a young lawher here that is trying to prosper Let's support chestnut & fall in behind him and make more chestnuts & fall in behind them & make them prosper.

Chestnut said he is nervous while they are taking notes.

300 head count

9:05 Solomon Seay - Reading scripture

Black would fight for freedom but so far he has been deprived.

Learn to be free and learn to go to any school of your choice.

He's reading everything from a prepared speech.

Using big words, and audience doesn't understand -

Chestnut is doing most of the clapping now.

Iron cross has been on us too long in fear of the white people. Now is the time not to be afraid of anyone.

If we have confidence in ourselves as we do in God, we would get what we are striving for.

Speech not going over very big.

No one has reported what the negro has achieved they have reported what they 'have not achieved.

9:25 Seay sat down.

L. L. Anderson --

It takes a great man (referring to priest) of great courage to come in and sit where he is sitting now.

A negro is somebody isn't he?

Anderson - "Negro has what it takes to close up stores in Selma. I'm not saying that to hear my self talk. I mean that.

The Sheriff in the back has his bark, Mr. Clarke.

We have the power in our pocket to close the stores down town.

We can whip the white man because we can love better than the white man.

Laf. is leading them in singing

Laf. - Exp. SNVCC

We will be all over Ala.

People all over U. S. know that there are people in Sel Ala. that wont to be free.

People in Miss know about it.

My Brother in work was killed, the same night I was beat in the head - Few days later I went to jail and I not afraid to go to jail

9:45 Sh. J. C. and Gov. G.W.C. does not intend
for the negro to be free and esp. Sh. J. C.
does not intend for the negro in Dallas Co
to be free.

You don't heed the big knives to protect
yourselves, you have the truth to protect
yourselves. Referred to being brought in
dead like a deer across car.

[These notes are in different handwriting from the two preceding.]

7:50 P.M. 7-8-63

80-85 People Inside Church

Same Priest is at meeting but in congregation

7:55 Boynton's wife is leading in a song at this time

7:59 Douglas L. Pope is Master of Ceremonies tonight

8:07 125 - 140 now in church

8:10 There is no Black water and no white water it is
all the same -

8:12 A - 11 - 12 yr old girl talking at this time.

8:15 Girl has memorized all this and said why should
they keep us down and kick us just because of
our race.

8:17 O. L. Pope is from Beloit

8:25 Speaker just said he went to war to fight for
Alabama and especially Dallas Co. (Henry Shannon)
Henry Shannon was doing talking.

8:31 Speaker said He wasn't satisfied and He Knew they
wasn't satisfied, so lets move to the court house
and get paid for working -

8:32 White Priest just went up on stand.

8:34 Said Who are Negroes? they are human being like
every one else.

8:37 C/F Foster said Mothers would smother their infants
because they didn't want them to grow up Slaves -

- 8:39 Who or Why the Negroes were not being Represented
in Washington.
- 8:42 Said 450,000 that fought for and still fighting
for this Country and wants to know why they are
not being represented in Washington.
- 8:44 200 and 3/4 are young people in church at this time.
- 8:45 Fixing to sing song (Got the Whole World in your
Hands) for somebody in Montgomery to represent them.
- 8:49 Gildersleeve estimated crowd to be 350, very
doubtful -
- 8:50 Speaker asked who wanted to be free, everyone
Held up hands
- 8:51 Fixing to take up Collection.
- 8:52 Idea of Meeting is to promote Voting & Freedom.
- 8:53 Not satisfied with Collection and they are going
up & down isles asking people to donate something
- 8:59 James Austin from Dallas Co., But in Talledega Now
telling how they were beaten up there.
- 9:01 When they go down town to register you get beat
up. If you don't go to spend your money they
can't spend theirs.
- 9:03 If you go to Mr. Carters drug store you couldn't
spend your Money because its for white only.

9:05 Chestnut said he was nervous while the officers
were taking notes and using Walkie Talkies -

9:08 Soloman Seay is guest speaker and is speaking now.

9:11 Reading scripture from bible.

9:16 To learn to be free so they could go to Any School
of their choice.

9:17 Reading everything from prepared speech.

9:19 Speaker is using too big of a words and audience
does not understand what he is talking about.

9:20 Chestnut is doing most of clapping now.

9:22 The iron cross has been on them too long and
they should fear the white people any longer.

9:24 If they had confidence in themselves as they
have in God they would get what they are striving
for.

9:25 All the clapping is not for speaker, because its
not going over so good.

9:26 Speaker said No One has reported what the Negro
has achieved and had reported what they had not
received

9:26 Main speaker just sat down.

9:27 Rev. Anderson is up to speak now -

9:29 Anderson said white Priest was a man of great
Courage, For him to come and sit with them.

9:30 Anderson said A Negro is some body.

9:33 Speaker is doing general talking.

9:36 Negro's have what it takes to close up every store
in Selma and that is facts

9:37 The sheriff in the back had his bark Mr. Clark

9:38 They have the power in their pockets to close
the stores in town.

9:39 They could whip the white man, because they Could
love better than the white man.

9:40 Bernard Layfette is leading in singing now.

9:43 Talking about Non-Violent outfit in Mississippi
said People here would soon know about it.

9:45 Said Reference Negro that was killed in Mississippi,
that he was knocked in Head and put in jail, that
he is not afraid to go to jail.

9:47 Speaker said this group would be over Ala. before
summer is over.

9:48 Sheriff Jim Clark and Governor Wallace did not
want the Negro to be free, especially Sheriff
Jim Clark of Dallas Co.

9:54 Just told people they didn't need the long knives
that they could throw them in the river, that they
had the truth to protect them.

9:55 Standing up doing the snake dance and singing.

9:57 Crowd is breaking up now, 75% young people

66 2/3% not of voting age.

Title 14, Section 437 of the Alabama Code
(1958 Recomp.), the criminal statute under which
Bernard Lafayette was prosecuted for vagrancy provides
as follows:

§ 437. (5571) (7843) (5628) (4047)
(4218) (3630) (88) Vagrancy defined.--
The following described persons are
vagrants:

(1) Any person who wanders or strolls
about in idleness, or lives in idleness,
who is able to work, and has no property
sufficient for his support.

(2) Any person leading an idle, immoral,
or profligate life, who has no property
sufficient for his support, and who is
able to work, and does not work.

(3) Any able-bodied person having no
property sufficient for his support, who
loafs, loiters, or idles in any city,
town, or village, or upon a public high-
way, or about a steamboat landing, or a
railroad station, or any other public place
in this state, or any place where intoxi-
cating liquors are sold, without any regular
employment.

(4) Any person trading or bartering
stolen property, or who unlawfully sells or
barters any spirituous, vinous, or malt or
other intoxicating liquors.

(5) Any person who is a common drunkard.

(6) Any person who is a professional
gambler.

(7) Any able-bodied person who is found
begging.

(8) Any able-bodied person who shall
abandon his wife and children, or either of
them, without just cause, leaving her or

them without sufficient means of subsistence,
or in danger of becoming a public charge.

(9) Any person who is a prostitute.

(10) Any person who is a keeper,
proprietor or employee of a house of
prostitution.

(11) Any person who is a keeper, proprietor
or employee of a gambling house.

(12) Any person who has no property
sufficient for his support and who is able
to work and does not work, but hires out
his children or allows them to hire out.

(13) Any person over the age of twenty-
one years, able to work, and who does not
work, and has no property sufficient for
his support, and has not some means of a
fair, honest, and reputable livelihood, is
a vagrant.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Appellant has been served by official United States mail in accordance with the rules of this Court to each of the attorneys for appellees addressed as follows:

Honorable Richmond M. Flowers
Attorney General
Montgomery, Alabama

Honorable Gordon Madison
Assistant Attorney General
Montgomery, Alabama

Blanchard McLeod, Solicitor
Fourth Judicial Circuit
Camden, Alabama

Henry F. Reese, Jr.
County Solicitor
Selma, Alabama

Thomas G. Gayle, Esq.
1104 1/2 Water Avenue
Selma, Alabama

W. McLean Pitts, Esq.
Pitts & Pitts
P.O. Box 722
Selma, Alabama

J. Edgar Wilkinson, Esq.
Wilkinson, Wilkinson & Russell
Peoples Bank Building
Selma, Alabama

Honorable James Hare
Judge, Fourth Judicial Circuit
Selma, Alabama

M. Alston Keith, Esq.
Selma, Alabama

Dated: September 9, 1964

/s/ GERALD P. CHOPPIN
GERALD P. CHOPPIN,
Attorney,
Department of Justice,
Washington, D.C. 20530

