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CIRCUIT COURT OF DALLAS COUNTY  
/ STATE OF ALABAMA

/ IN THE MATTER OF )  
/ GRAND JURY INVESTIGATION )  
/ NOVEMBER, 1963 )

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CLAIM OF PRIVILEGE BY THE  
/ ATTORNEY GENERAL OF THE UNITED STATES

1. On or about October 17, 1963, George C. Wallace, Governor of the State of Alabama, issued a public statement charging that the United States Department of Justice had provided the Reverend Martin Luther King with transportation while in the State of Alabama, and that the said King, "a racial agitator and troublemaker who has caused demonstrations to occur throughout the United States can now apparently travel at the expense of the United States Government." A copy of said statement as reported in the Montgomery Advertiser and Birmingham Post Herald of October 17, 1963, is annexed as Exhibit A.

2. In a letter dated October 28, 1963, William F. Thetford as Solicitor of the Fifteenth Judicial Circuit of Alabama (Montgomery County) wrote to the United States Attorney for the Middle District of Alabama reciting the above charge, and, referring to a denial thereof by the Department of Justice, stated that "[w]hile there is no violation of state law involved, I am submitting such evidence as may be available to our November Grand Jury

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as a matter of public interest"; in the same letter he invited the Department of Justice to provide witnesses for the Grand Jury. A copy of the said letter is annexed as Exhibit B.

3. By letter dated November 4, 1963, addressed to Mr. Thetford, Burke Marshall, Assistant Attorney General in charge of the Civil Rights Division of the Department of Justice, declined the aforesaid invitation on the ground that there was no purpose "in furnishing witnesses to testify in a secret proceeding on a matter admittedly beyond the scope of the Grand Jury's legitimate inquiry." A copy of the said letter is annexed as Exhibit C.

4. On November 4, 1963, the Clerk of this Court issued identical subpoenas commanding the appearance before the above Grand Jury on November 13, 1963, of the following officers of the Civil Rights Division of the Department of Justice: Burke Marshall, Assistant Attorney General; John Doar, First Assistant; and Richard Wasserstrom, David H. Merlin, Arvid A. Sather, and Kenneth McIntyre, attorneys. Copies of the aforesaid subpoenas were transmitted to the Department of Justice by registered mail on November 4 and were received on November 6.

5. On November 6, 1963, the Department of Justice issued a statement regarding the transportation of the Reverend Luther King. It was stated therein that the Department's earlier denial on October 13, 1963, of the use of an

7. On November 8, 1963, Mr. David H. Marlin, an attorney in the Civil Rights Division of the Department of Justice, was personally served with a subpoena commanding his appearance before the above Grand Jury on November 13, 1963, to give testimony before the said Grand Jury on matters pending before it, and it appears that other officers of the Department of Justice may be similarly served with subpoenas commanding their appearance before the Grand Jury for the same purpose.

8. The Department of Justice has made a complete disclosure regarding the incident which has apparently precipitated the Grand Jury investigation. A responsible official of the State of Alabama has stated that no violation of the laws of that State occurred in connection therewith. It nevertheless appears that the Grand Jury may seek to elicit from Mr. Marlin and other officers of the Department of Justice testimony or documents, or both, relating to the role, activities or knowledge of the Department of Justice or of its officers or employees, in connection with racial relations, unrest, demonstrations, disorders, differences or conflicts in the State of Alabama or elsewhere, or relating to crimes or possible crimes arising out of or connected with such racial relations, demonstrations, unrest, disorders, differences or conflicts.

9. Pursuant to the authority vested in me by the Constitution and laws of the United States, I have determined that the giving of any testimony or the production of any

documents relating to the subjects enumerated in the preceding paragraph hereof, or the giving of any testimony or the production of any documents which might be deemed to constitute a waiver of the claim of privilege here made with respect any such testimony or documents, by any officer or employee of the Department of Justice, would interfere with investigations by the Department of Justice of violations of the laws of the United States and enforcement by it of such laws, would be prejudicial to the efficient operation of the said Department and would not be in the public interest.

Therefore, as Head of the Department of Justice, I do hereby assert the privileged status of all such testimony and documents and do hereby direct Mr. David H. Marlin, and any other officer or employee of the Department of Justice who may be served with a subpoena to appear and testify or produce documents before the said Grand Jury, on the basis of such claim of privilege, respectfully to decline to give any such testimony or produce any such documents.

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Attorney General

Dated: Washington, D. C.

William F. Thetford, Solicitor  
Maury D. Smith, Deputy Solicitor  
Frank W. Riggs, III, Deputy Solicitor

EXHIBIT B

OFFICE OF THE SOLICITOR  
Fifteenth Judicial Circuit of Alabama  
County Court House  
Montgomery 4, Alabama

October 28, 1963

RECEIVED

Honorable Ben Hardeman  
U. S. District Attorney  
Post Office Building  
Montgomery, Alabama

Oct. 29, 1963  
United States Attorney  
Middle District  
of Alabama

Dear Mr. Hardeman:

The Governor of Alabama has charged that the Civil Rights Division of the United States Department of Justice has been furnishing transportation for racial agitators in Alabama. This charge has been denied by the Department of Justice.

While there is no violation of State law involved, I am submitting such evidence as may be available to our November Grand Jury as a matter of public interest. It is our desire to conduct a completely fair and impartial investigation in this matter. Should the Justice Department have witnesses available to testify, I will be glad to bring them before the Grand Jury.

Yours very truly,

(S)

WILLIAM F. THETFORD

WFI/bbj

4 EXHIBIT C

4 November 4, 1963

4 AIR MAIL-SPECIAL DELIVERY

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

Dear Mr. Thetford:

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

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

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

For your information I enclose a copy of the statement.

Enclosure

7 Very truly yours,

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

4 BURKE MARSHALL  
Assistant Attorney General  
Civil Rights Division

4 November 6, 1963  
4 Statement by Department of Justice

Reports were published in Alabama last month that automobiles rented by the Department of Justice were used to transport Reverend Martin Luther King from Birmingham to Selma on the evening of October 15.

The Department of Justice issued a statement on October 18, asserting that no automobiles rented by the Department of Justice had been used to drive Reverend King either from Birmingham to Selma or from Selma to Montgomery.

No car rented by the Department was used to drive Reverend King from Selma to Montgomery. However, a car rented by the Department and being used by a Department lawyer was loaned to a private citizen who subsequently drove Reverend King from Birmingham to Selma on October 15.

During this time, the attorney, Thelton Henderson, remained in Birmingham. Nevertheless, the use of the car for unofficial business was contrary to Department of Justice regulations. It was also contrary to a statement which Mr. Henderson originally gave to the Department of Justice. Mr. Henderson came forward last night and voluntarily gave a correct account of what occurred. He has submitted his resignation to the Department and it has been accepted.

The Department regrets very much that its earlier statement as to the use of a car rented by the Department in connection with Reverend King's transportation from Birmingham to Selma was based on misinformation and, therefore, erroneous.

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

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