FEDERAL BUREAU OF INVESTIGATION

VIOLA LIUZZO MURDER

PART 13 OF 14

FILE NUMBER : 44-28601

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Belmont

FROM : A. Rosen

DATE: December 27, 1965

1 - Mr. Belmont
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines

SUBJECT: EUGENE THOMAS, ET AL.;
VIOLA LIUZZO, AKA.,
ET AL. - VICTIMS
CIVIL RIGHTS

Gary Thomas Rowe our informant in this case involving the shooting of Mrs. Liuzzo was advised of the Department's desire that he testify before the House Committee on Un-American Activities. Rowe stated that he did not desire under any circumstances to testify before the Committee and in his previous discussion with Departmental attorneys before the last Federal trial he had made it very clear to them that he did not wish to testify at any future trials or hearings. He stated that insofar as testifying is concerned he felt that he had fulfilled his obligation to the Government and he feared for his personal safety if he were called upon to testify further.

Mr. Kimon Zachos, Special Assistant to the Attorney General, who requested that we determine Rowe's attitude regarding testifying before the Committee was advised on 12/27/65 that Rowe had been contacted as requested and that Rowe had stated that he does not desire to testify before the Committee. Zachos was advised that the matter of whether or not Rowe would or should be subpoenaed to testify in spite of his present attitude was strictly a matter between the Department, the Committee and Rowe, and the Bureau assumed no further responsibility.

REC-13

[redacted]

Enclosure

JWM:vew
(6)

JAN 20

CONTINUED - OVER

Memorandum to Mr. Belmont

RE: EUGENE THOMAS, ET AL.;

ACTION:

1. Attached for approval is a letter to the Attorney General confirming the above advice furnished to Mr. Zachos that Rowe does not wish to testify before the House Committee on Un-American Activities and that the Bureau will no longer accept responsibility, either financially or security wise for Rowe after December 31, 1965.

2. [redacted] b7A

The Attorney General

December 27, 1965

Director, FBI

[redacted], ET AL.;
[redacted] LIBEL, ETC.,
[redacted] - VICTIMS
CIVIL RIGHTS

1 - Mr. Belmont
1 - Mr. Rosen
1 - Mr. Bailey
1 - Mr. McGowan
1 - Mr. Hines

This will confirm the conversation of Mr. J. William Hines of the FBI with Mr. Ringo Zachos, your Special Assistant, on December 27, 1965, wherein Mr. Zachos was advised that Cary Thomas Rowe had been contacted and stated that he did not wish to testify before the House Committee on Un-American Activities.

[redacted] b7A

[redacted] b7A

[redacted] b7A

JWH:vew
(8)

NOTE:

See Rosen to Belmont memorandum same date, same caption, JWH:vew.

MAIL ROOM ☐ TELETYPE UNIT ☐

PA

The Attorney General

REC-13 44-1001-676

Director, FBI

December 27, 1965

1 - Mr. Belmont
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines

EUGENE THOMAS, ET AL.;
VIOLA LIUZZO, AKA.,
ET AL. - VICTIMS
CIVIL RIGHTS

This will confirm the conversation of Mr. J. William Hines of the FBI with Mr. Kimon Zachos, your Special Assistant, on December 27, 1965, wherein Mr. Zachos was advised that Gary Thomas Rowe had been contacted and stated that he did not wish to testify before the House Committee on Un-American Activities

[redacted] b7A

[redacted] b7A

[redacted] b7A

JWH:vew
(8)

NOTE:

See Rosen to Belmont memorandum same date, same caption, JWH:vew.

79 JAN 20 1966

MAIL ROOM ☐ TELETYPE UNIT ☐

JAN 20 1966

STANDARD FORM NO. 64

Office Memorandum · UNITED STATES GOVERNMENT

TO: Mr. Cartha D. DeLoach
Assistant to the Director, FBI

DATE: December 27, 1965

FROM: The Attorney General

SUBJECT:

Per our conversation.

N. deB. K.

Enclosures (2)

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Mr. Wick
Tele. Room
Miss Holmes
Miss Gandy

ENCLOSURE

REC-13 44-2[illegible]-677

JAN 20 1966

6[illegible]

UNITED STATES GOVERNMENT

Memorandum

TO : The Attorney General

DATE: December 27, 1965

FROM : Director, FBI

SUBJECT: EUGENE THOMAS, ET AL.;
VIOLA LIUZZO, AKA.,
ET AL. - VICTIMS
CIVIL RIGHTS

This will confirm the conversation of Mr. J. William Hines of the FBI with Mr. Kimon Zachos, your Special Assistant, on December 27, 1965, wherein Mr. Zachos was advised that Gary Thomas Rowe had been contacted and stated that he did not wish to testify before the House Committee on Un-American Activities.

[redacted] b7A

[redacted] b7A

[redacted] b7A

JAN 20 1966

GENERAL INVESTIGATIVE DIVISION

Gary Thomas Rowe is [redacted] informant who furnished information which lead to the successful prosecution of three subjects in the shooting of Mrs. Liuzzo. At the request of the Attorney General we contacted him to determine if he would consent to interview by a representative of the House Committee on Un-American Activities and if he would accept a Deputy Marshall job. A letter is being sent to the Attorney General today advising him of information in attached.

[redacted]

ICG:gfs

DECODED COPY

☐ AIRGRAM ☐ CABLEGRAM ☐ RADIO ☒ TELETYPE

7:51 PM PST URGENT 12-31-65 KMH

TO DIRECTOR (44-28601)

FROM SAN FRANCISCO (44-609) 010014

ATTENTION: GENERAL INVESTIGATIVE DIVISION, CIVIL RIGHTS SECTION

EUGENE THOMAS; ET AL; VIOLA LIUZZO; ET AL-VICTIMS. CR-EL.

RE BUREAU TELEPHONE CALL THIS DATE.

ROWE STATED HE WOULD BE HAPPY AND WILLING TO MEET WITH ONE OR TWO MEMBERS OR REPRESENTATIVES OF THE HCUA AT A MUTUALLY AGREEABLE TIME AND PLACE. HE ASKS ONLY THAT THE PLACE NOT BE SAN FRANCISCO. HE FEELS THAT THE COMMITTEE SHOULD HAVE HIS INFORMATION AVAILABLE TO THEM BUT FOR PREVIOUSLY SUBMITTED REASONS OF SECURITY DOES NOT WANT TO APPEAR BEFORE A FULL HCUA HEARING. [redacted]

b7D

REC-13 44-28601-411

JAN 19 1966

79 JAN 20 1966

If the intelligence contained in the above message is to be disseminated outside the Bureau, it is suggested that it be suitably paraphrased in order to protect the Bureau's cryptographic systems.

Memorandum to Mr. Rosen
RE: EUGENE THOMAS, ET AL.

According to Welborn Rowe inquired of the San Francisco Office whether McShane was aware of the discussions that Rowe had had with Departmental representatives concerning the plan for an "ultimate settlement." Welborn further stated that Rowe indicated he is looking to the Department for satisfaction in connection with his discussions with Departmental representatives and made no reference to the FBI in this connection. Welborn was instructed to advise Rowe that if he had any question whatsoever concerning discussions he had had with Departmental representatives, he should take them up with McShane.

ACTION:

San Francisco is continuing to follow this matter closely and will keep the Bureau advised of all pertinent developments.

Rowe's reference to "ultimate settlement" obviously refers to a lump sum settlement which was the subject of discussion with Departmental representatives. Inasmuch as Rowe indicated he is looking to the Department for satisfaction in connection with his discussion with Departmental representatives and made no reference to the FBI in connection with this and inasmuch as he was told to take up any question concerning it with the Department, it is recommended that we alert the Department to this current development. It is recalled we have previously referred to the Department for their immediate attention any comments which Rowe has made to us heretofore concerning this and other matters relating to a possible settlement. There is being prepared a memorandum to the Attorney General, with copies to the Deputy Attorney General and Assistant Attorney General John Doar, concerning this current development.

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (44-38601) DATE: 1/20/66

FROM : SAC, NEW ORLEANS (157-3954) (P)

SUBJECT: EUGENE THOMAS, ET AL;
VIOLA GREGG LIUZZO, aka.,
ET AL - VICTIMS
CR; EL
OO: MOBILE

Rerep of SA [redacted] Mobile, 12/9/65. b7C

On January 19, 1966, Mr. RICHARD WINDHORST, Deputy Clerk, Fifth Circuit Court of Appeals, New Orleans, Louisiana, advised that the case was docketed January 7, 1966, and an extension of time to file record to March 1, 1966, has been granted.

Will advise the Bureau and Mobile of decision in this matter.

(2) - Bureau
2 - Mobile (44-1245)
2 - New Orleans

CLH/mrk
(6)

REC-82 44-38601-683

14 JAN 21 1966

FD-36 (Rev. 5-22-64)

FBI

Date: 1/17/66

Transmit the following in ____________________
(Type in plaintext or code)

Via AIRTEL REGISTERED
(Priority)

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Mr. Wick
Tele. Room
Miss Holmes
Miss Gandy

TO: Director, FBI (44-28601)

FROM: SAC, Detroit (44-643)

EUGENE THOMAS, Et Al; -
VIOLA LIUZZO, aka.,
Et Al - VICTIM
CR - EL
(OO: MOBILE)

Re Detroit teletype to Bureau, 1/16/66.

Enclosed is LHM concerning above matter. One copy of LHM being furnished Mobile and Birmingham.

3 - Bureau (Enc. 2) (RM)
1 - Mobile (Selma) (Enc. 1) (Info) (RM)
1 - Birmingham (Enc. 1) (Info) (RM)
1 - Detroit
MFC/rms
(6)

Agency CRD
Date Forw. JAN 20 1966
How Forw. 6-91 (6)
By

cc CIVIL RIGHTS UNIT (xerox)

REC 3 44-28601-

JAN 19 1966

Approved: ____________________ Sent ________ M Per ____________
Special Agent in Charge

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

Detroit, Michigan
January 17, 1966

Re: Eugene Thomas, Et Al;
Viola Liuzzo, Et Al - Victim

Mr. Anthony Liuzzo, husband of Viola Liuzzo, deceased, on January 16, 1966, telephoned the Detroit Division of the Federal Bureau of Investigation (FBI) to advise that he had received information that an advertisement had appeared in the "Birmingham News" at Birmingham, Alabama, offering the 1963 Oldsmobile in which his wife had been killed for sale. Mr. Liuzzo did not know the current owner of the vehicle at the time of his call on January 16, 1966.

On January 17, 1966, Mr. Anthony Liuzzo again telephoned the Detroit Division and advised that he had originally heard of the advertisement appearing in the "Birmingham News" when he received a telephone call on January 16, 1966, from "United Press" advising him of the advertisement which was quoted as follows:

"Notice -- Do You Need A Crowd Gatherer? I have a 1963 Oldsmobile in which Mrs. Viola Liuzzo was killed. Bullet holes and everything still intact. Ideal to bring in crowds. $3,500.00."

Mr. Liuzzo stated that on January 17, 1966, he contacted the General Motors Acceptance Corporation (GMAC) at Detroit, Michigan, and through them he learned that the Birmingham Division of GMAC had sold the 1963 Oldsmobile to one J. [redacted] Turner, 2303 20th Place, Birmingham, Alabama. Mr. Liuzzo stated that he had spoken to his attorney, William Buffalino, concerning this matter.

Mr. Liuzzo stated that he was considering telephoning Mr. John Doar, Assistant Attorney General, Civil Rights Division, of the Department of Justice concerning this matter.

[redacted]

ENCLOSURE

44-27601-6-1

Re: Eugene Thomas, Et Al;
Viola Liuzzo, Et Al - Victim

Attached is a copy of an article appearing on Page 6, Column 1, of the "Detroit Free Press", a daily newspaper published at Detroit, Michigan, on January 17, 1966.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Liuzzo Asks Court On Death Car Ad

Anthony Liuzzo, husband of [illegible] Viola Liuzzo, said Sunday he will [illegible] court action in Alabama to stop the sensational [illegible] of the car in which his wife was killed.

An advertisement in the Birmingham (Ala.) News Saturday called the car a "crowd-getter" and listed the 1963 Oldsmobile, complete with bullet holes, for $3,[illegible].

"I don't care what they do with the car," said Liuzzo. "But I definitely intend to stop the use of my wife's name in this way. It's incredible that anyone would try to capitalize on this."

• • •

MRS. LIUZZO, a Detroit housewife, was fatally shot the night of March 25 as she drove along US-250 in Lowndes County, Ala.

"Never [illegible] grotesque [illegible] "I have [illegible] Oldsmobile [illegible] door [illegible] Mrs. Viola Liuzzo was killed. Bullet holes and everything [illegible] intact. Need to bring in [illegible]. $3,[illegible]."

No name or phone number was listed and prospective buyers were instructed to write to a postal box in care of the newspaper.

44-2760-684

[illegible]

HQ 29[illegible]-686 IN THIS FILE SKIPPED DURING SERIALIZATION.

[illegible]

[illegible]

9-6-6

FBI

Date: 1/19/66

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL AIRMAIL (Priority)

TO: DIRECTOR, FBI (44-28601)

FROM: SAC, BIRMINGHAM (44-1236)(P)

SUBJECT: EUGENE THOMAS, ET AL;
MRS. VIOLA LIUZZO, aka; ETAL - VICTIMS
CR - EL

(OO: MOBILE)

Re Detroit teletype to Bureau dated 1/16/66.

Enclosed for information of the Bureau are two copies each of classified advertisement which appeared in "The Birmingham News" and "Birmingham Post-Herald" on 1-15-66, and which was referred to in referenced teletype.

[redacted], "The Birmingham News", Birmingham, Alabama, advised on 1/18/66 that it was his understanding the LIUZZO automobile had been purchased by a private individual from a finance company, which held legal title, with the express intention of making a large profit by resale. [redacted] stated it was the policy of "The Birmingham News" not to reveal the names of individuals placing classified advertisements; however, he felt this information could be obtained, if necessary, through subpoena.

[redacted] advised he has reliable information that the LIUZZO automobile was recently purchased by one JAMES W. TURNER, 2308 - 20th Place, Ensley,

3 - Bureau (Enc. 4) ENCLOSURE
1 - Detroit (44-643)(Enc. 1)(Info)
1 - Mobile (44-1245)(Enc. 1)(Info)
2 - Birmingham
NPS:bss
(7)

REC-9 44-28601-68

JAN 21 1966

JAN 21 1966

1 - CIVIL RIGHTS UNIT (XEROX)

C C - WFO

Approved: _____ Sent _____ M Per _____

55 FEB 3 1966

Special Agent in Charge

Birmingham, Alabama, from GENERAL MOTORS ACCEPTANCE CORPORATION, and that TURNER is the individual who has placed the enclosed advertisement in "The Birmingham News".

Birmingham indices negative regarding TURNER and no further investigation anticipated by this division, UACB.

Copy of above-mentioned ad is being enclosed for Mobile and Detroit.

(Mount Clipping in Space Below)

FINANCIAL

BUSINESS OPPORTUNITIES 12(

NOTICE. Do you need a crowd
[illegible]? I have 1963 Oldsmobile 2 dr.
that Mrs. Viola Liuzzo was killed in.
Bullet holes & everything still intact.
Cost $ to bring in crowd $3,500
Write Box care News

(Indicate page, name of newspaper, city and state.)

17 THE BIRMINGHAM NE
Birmingham, Alabam

Date: 1-15-66
Edition: Red Star Final
Author:
Editor:
Title: EUGENE THOMAS, ETAL;
MRS. VIOLA LIUZZO, aka
ETAL - VICTIMS
Character: CR; EL
or
Classification:
Submitting Office: BIRMINGHAM

☐ Being Investigated

ENCLOSURE [illegible]-137

FD-350 (Rev. 7-16-63)

(Mount Clipping in Space Below)

★ FINANCIAL

BUSINESS OPPORTUNITIES 120

NOTICE. Do you need a crowd drawer? I have 1963 Oldsmobile 2-dr. that Mrs. Viola Liuzzo was killed in. Bullet holes & everything still intact. Ideal to bring in crowd. $3,500. Write D-46, care News.

(Indicate page, name of newspaper, city and state.)

22 BIRMINGHAM POST-HERALD
Birmingham, Alaba[illegible]

Date: 1-15-66
Edition: Final
Author:
Editor:
Title: EUGENE THOMAS, ETAL; MRS. VIOLA LIUZZO, aka ETAL - VICTIMS.
Character: CR; EL
or
Classification:
Submitting Office: BIRMINGHAM

[ ] Being Investigated

ENCLOSURE

1 - Mr. Griffith
1 - Mr. Thompson

SAC, Mobile (44-1245)

January 25, 1966

Director, FBI (44-28601)

EUGENE THOMAS;
et al.;
VICLA LIUZZO, aka;
LEROY JEROME MOTON - VICTIMS
CR - EL

ReBulet 10/29/65 and Laboratory report 4/14/65 regarding nine plaster of Paris casts of tire impressions described as Q63 through Q71.

The plaster casts will be destroyed by the Laboratory in thirty days unless advised to the contrary by your office.

NOTE: This evidence was not material in this case and no examinations were actually conducted although they were being maintained by the Laboratory for possible future comparisons.

REC-24 44-28601-

JAN 25 1966

MAILED 4
JAN 24 1966
COMM-FBI

Tolson
DeLoach
Mohr
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter

CET:ML (5)

5 FEB 3 1966

MAIL ROOM ☑ TELETYPE UNIT ☐

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Conrad

FROM : R. H. Jevons

DATE: January 26, 1966

1 - Mr. Conrad
1 - Mr. Jevons
1 - Mr. Herndon
1 - Mr. Williams

SUBJECT: EUGENE THOMAS, ET AL.;
VIOLA LIUZZO, AKA; ET AL. - VICTIMS;
CR - EL

Attached is Interesting Identification Laboratory Draft No. 1157 entitled "LABORATORY EXPERTS ASSIST IN PROSECUTION OF LIUZZO SLAYERS."

RECOMMENDATION:

None. For information only.

Enclosure

44-28601

1 - Budget Unit, Room 5509
1 - Mr. J. E. McHale, Room 1523
2 - Mr. M. A. Jones, Room 4264

BPH:SAC
(9)

1 ENCLOSURE

CRIME RESEARCH
THREE

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to
File No. 44-28601

WASHINGTON, D.C. 20535

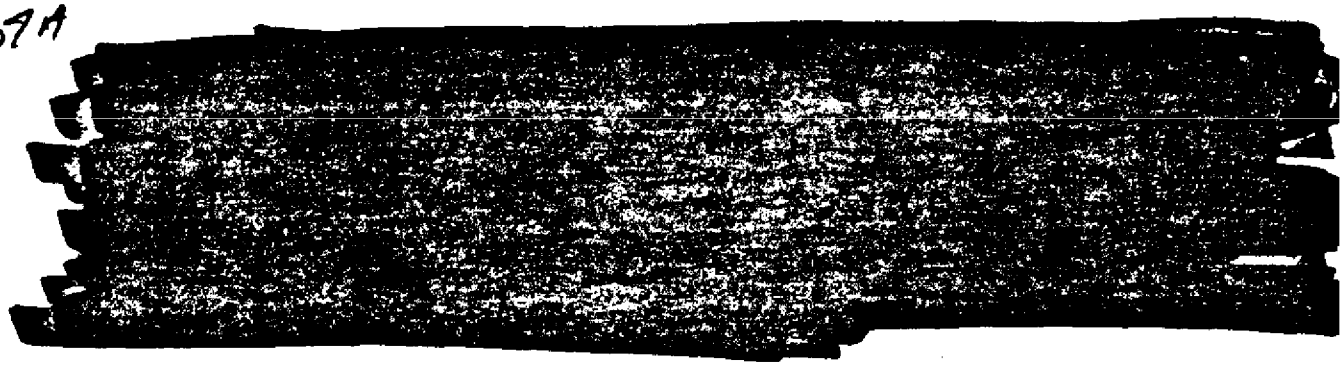
January 26, 1966

I. I. L. Draft No. 1157

LABORATORY EXPERTS ASSIST IN PROSECUTION OF LIUZZO SLAYERS

Late on the evening of March 25, 1965, near Selma, Alabama, civil rights worker Viola Liuzzo was shot while engagin in the transportation of civil rights workers between Selma and Montgomery, Alabama. A FBI Laboratory examiner was immediately dispatched to the scene to obtain and examine any physical evidence found in an examination of the victim's car.

b7A



After much publicity and two unsuccessful state trials, three defendants were indicted by a federal grand jury for conspiracy to violate the civil rights of the victims. In the federal trial, the FBI Laboratory experts testified to their findings. The defendants were found guilty and each was sentenced to ten years in prison.

44 2[illegible] 1-1

FD-36 (Rev. 5-22-64)

FBI

Date: 1/28/66

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Priority)

TO: DIRECTOR, FBI (44-28601)

FROM: SAC, TAMPA (44-313) (RUC)

EUGENE THOMAS, et al.;
VIOLA LIUZZO, aka, et al. - VICTIMS
CR-EL
OO: BH

ReTPairtel 1/5/66.

As instructed in Butelcall 12/31/65, no further contact has been had with Mrs. DOROTHY M. ROWE and this case is considered RUC.

3 Bureau (RM)
1 Birmingham (RM) (44-1236)
1 Tampa
JEW-KH
(5)

REC-18 44-28601-697

17 JAN 31 1966

C C. Wick

66 FEB 7 1966

Special Agent in Charge

FD-36 (Rev. 5-22-64)

Mr. DeLoach
Mr. Mohr
Mr. Wick
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

FBI

Date: 2/8/66

Transmit the following in _______________ (Type in plaintext or code)

Via AIRTEL _______________ (Priority)

TO : DIRECTOR, FBI (44-28601)

FROM: SAC, DETROIT (44-643)

EUGENE THOMAS, Et Al;
VIOLA LIUZZO, aka,
Et Al - VICTIM
(OO: Mobile)

Enclosed is letterhead memorandum in duplicate concerning above matter. Two copies of LHM being furnished Mobile and one copy being furnished Louisville for information purposes.

No further action is indicated and no investigation will be instituted concerning receipt of these news clippings by ANTHONY LIUZZO, UACB.

Material mentioned in LHM was furnished by Mr. LIUZZO to SA's [redacted] and [redacted]. b7c

ENCLOSURE

REC 30 44-28601-7

3 - Bureau (Enc. 2)
1 - Louisville (Enc. 1)(Info)
2 - Mobile (Selma)(44-1245)(Enc. 2)(Info)
1 - Detroit
FJP/sal
(7)

FEB 11 1966

Agency CRD
Date FEB 11 1966
How forw
By

XEROX 1 cc CIVIL RIGHTS UNIT FEB 11 1966

C. WICK

Approved: _______________ Special Agent in Charge

Sent _______________ M Per _______________

54 FEB 17 1966

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

Detroit, Michigan
February 8, 1966

Re: Eugene Thomas, Et Al;
Viola Liuzzo, Et Al - Victim

Mr. Anthony Liuzzo, husband of Viola Liuzzo, deceased, furnished two envelopes with the same news clipping enclosed to Special Agents of the Federal Bureau of Investigation on February 8, 1966.

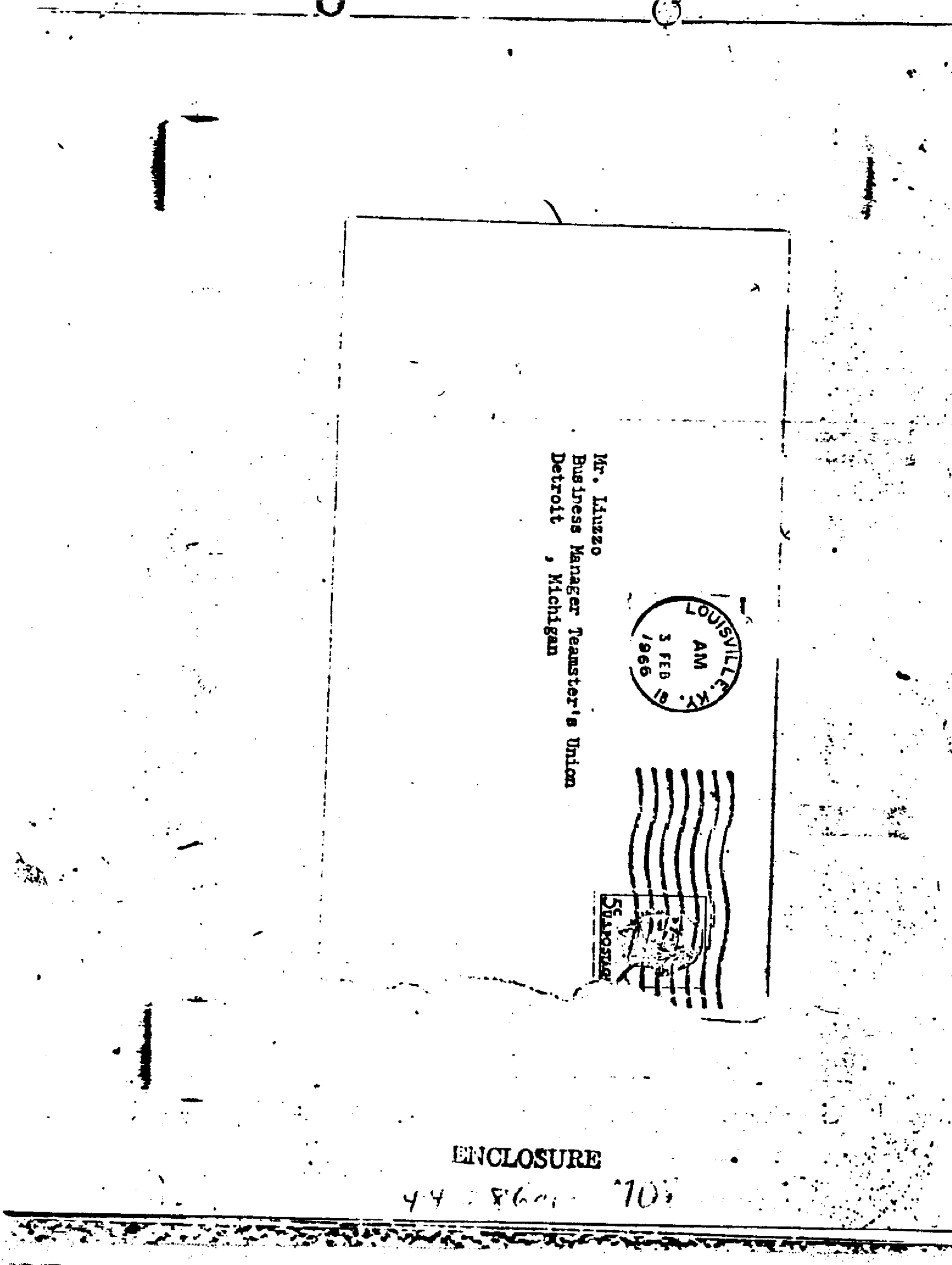
Xerox copies of each of the two envelopes and of the news clipping enclosed are attached.

Mr. Liuzzo advised that he attaches no significance to his receipt of these news clippings at his Teamsters office, Local 247, 2741 Trumbull, Detroit, Michigan, except that since they were mailed from a southern state as is indicated by the postmark on each of the envelopes, they may have some connection with the slaying of his wife in March, 1965 in the South.

Mr. Liuzzo advised he has no idea who may have mailed these news clippings to him and he said that they were received at his office in the normal course of business and were opened and handled by numerous employees.

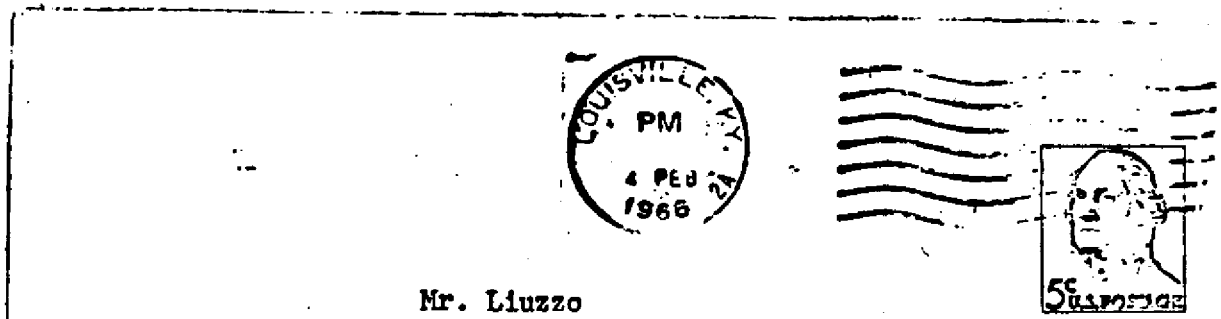
This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

ENCLOSURE

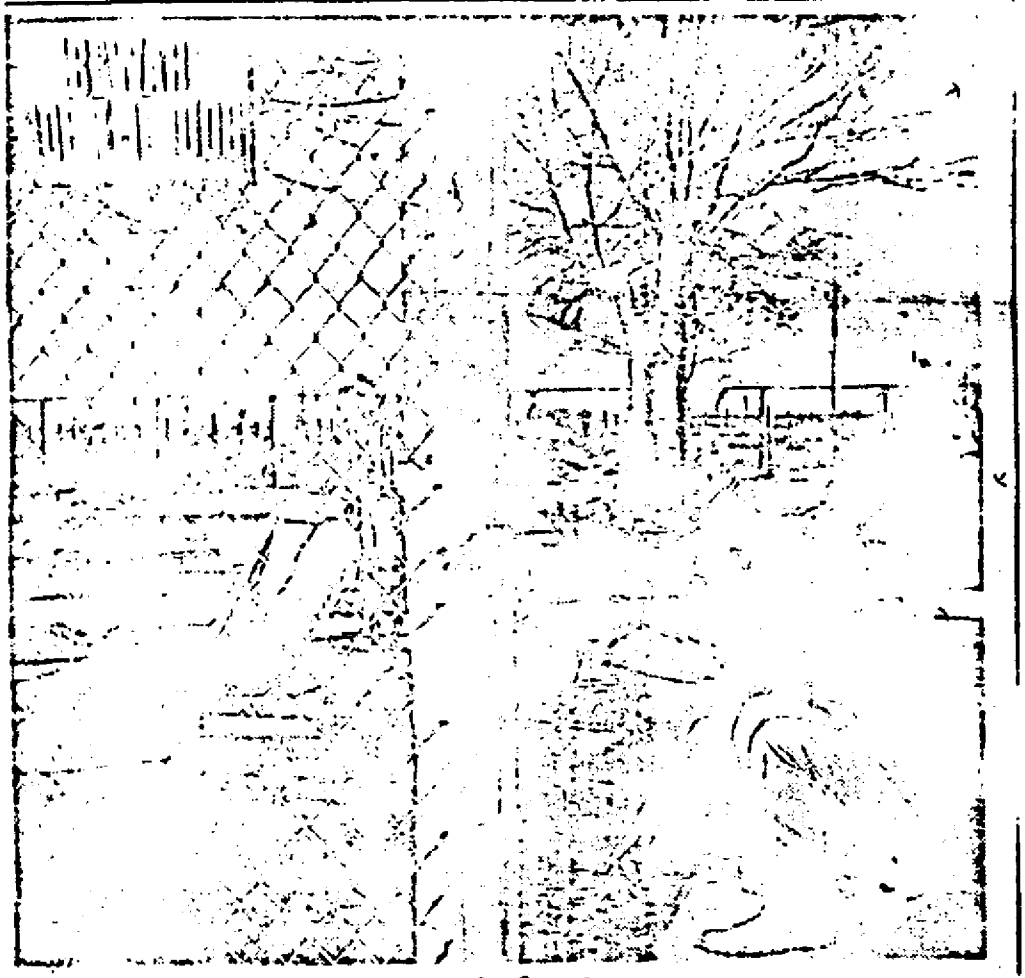


ENCLOSURE

44-8600-703



Mr. Liuzzo
Business Manager Teamster's Union
Detroit , Michigan



Site of slaying

A sheriff's deputy in Las Vegas examines blood-soaked ground, where Ralph Alsup, 54, business agent of Plumbers and Pipefitters Local 525, was assassinated Wednesday by an unknown killer who felled him with a single shotgun blast in front of his home. The labor leader's son, Ralph Jr., was alerted earlier by the family dog, but failed to spot the hidden slayer when he investigated. (UPI Telephoto)

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (44-28601) DATE: 3/2/66
ATTENTION: CRIME RECORDS DIVISION

FROM : SAC, MOBILE (44-1245) (P)

SUBJECT: EUGENE THOMAS, ET AL;
VIOLA GREGG LIUZZO, aka
ET AL - VICTIMS
CR; EL
(OO: MOBILE)

Re BUlet 1/27/66 requesting submission of IC write-up.

Following is current status of prosecution in this case. All three subjects were convicted in USDC, MDA, Montgomery, Ala., 12/3/65 and each was sentenced to serve ten years. All three were released on bond and the case is presently on appeal to the Fifth Circuit Court of Appeals.

In a separate case, subject THOMAS was sentenced in USDC, Birmingham, 2/25/66 to serve two years on NFA conviction. In another case, subject WILKINS appeared in USDC, Birmingham 12/20/65 and his probation on a 1954 firearms violation was revoked and he is now serving the previous one year sentence.

It is recognized that the Bureau may wish to delay the submission of the IC write-up while the sentence in this case is on appeal. However, in the absence of notification from the Bureau to that effect, Mobile will continue preparation of this write-up.

(2 - Bureau
2 - Mobile
JTB - mcl
(4)

REC 13 44-28601-712

MAR 2 1966

57 MAR 9 1966

CRIME RESEARCH

Mr. John Doar
Assistant Attorney General

Director, FBI

March 7, 1966

1 - Mr. Wick
1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines

EUGENE THOMAS, AND OTHERS
MRS. VIOLA LIUZZO - VICTIM
CIVIL RIGHTS

This is to advise you of an inquiry received by this Bureau on March 4, 1966, from Mr. Hal Ross of the Ziegler Ross Agency, 9255 Sunset Boulevard, Los Angeles, California, 90069, concerning Gary Thomas Rowe who furnished information to the FBI leading to the arrest and conviction of three subjects in connection with the shooting of Mrs. Viola Liuzzo in Lowndes County, Alabama, on March 25, 1965. Mr. Ross desired to know the whereabouts of Rowe and whether or not the FBI would have any objections to his company making contact with him in order to acquire literary rights to Rowe's story.

I have advised Mr. Ross that this Bureau no longer has any contact with Rowe.

The above is being brought to your attention for whatever action you may deem desirable.

MAR 8

JWH:hw
(9)

MAILED 4
MAR 7 1966
COMM-FBI

REC-11

NOTE: See Rosen to DeLoach memo 3-7-66, captioned "Eugene Thomas, Et al., Mrs. Viola Liuzzo - Victim, Civil Rights," JWH:hw.

44-28604-713

11 MAR 7 1966

Tolson
DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

54 MAR 11 1966 TELETYPE UNIT

UNRECORDED COPY FILED IN

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. DeLoach

DATE: March 7, 1966

FROM : A. Rosen

1 - Mr. DeLoach
1 - Mr. Wick
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines

SUBJECT: EUGENE THOMAS, ET AL;
MRS. VIOLA LIUZZO - VICTIM
CIVIL RIGHTS

Hal Ross of the Ziegler Ross Agency, Los Angeles, California, by letter dated 3/2/66, requested that FBI advise him of the whereabouts of Gary Thomas Rowe and asked whether or not the Bureau would have any objection to his company making a contact with Rowe to acquire literary rights to his story.

Gary Thomas Rowe was our informant who furnished information leading to the arrest and conviction of the three subjects on Federal charges in connection with the shooting of Mrs. Viola Liuzzo, a civil rights worker, in Lowndes County, Alabama, on 3/25/65. [redacted]

It is noted that Hal Ross by letter dated 5/17/65, to the Bureau suggested that he be permitted to contact Rowe for the purpose of interesting Rowe in selling rights to his life sto By letter dated 5/21/65, he was advised his proposal would be brought to Rowe's attention. This was done.

ACTION:

1. Attached for approval is a letter to Mr. Ross advis him that the Bureau has no longer any contact with Gary Thomas Ro and referring him to Mr. John Doar, Assistant Attorney General, C Rights Division, Department of Justice.

2. Also attached for approval is a letter to Mr. Doar advising him of the inquiry from Mr. Ross for whatever action the Department may deem desirable.

REC-35 44-24101

Enclosures (2)
JWH/pak
(7)

3-7-66

MAR 10 1966

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (44-28601) DATE: 3/10/66

FROM : SAC, NEW ORLEANS (157-3954) (P)

SUBJECT: EUGENE THOMAS, ET AL;
VIOLA GREGG LIUZZO, Aka.,
ET AL - VICTIMS
CR; EL

(OO: MOBILE)

Re New Orleans letter to Bureau, 1/20/66.

On 3/9/66, Mr. RICHARD WINDHORST, Deputy Clerk, Fifth Circuit Court of Appeals, New Orleans, Louisiana, advised that the Record on Appeal was filed 3/2/66, and is in the process of being printed.

Will advise the Bureau and Mobile of decision in this matter.

REC 70 157-3954-915

2 - Bureau
2 - Mobile (44-1245)
2 - New Orleans

CLM/jas
(6)

MAR 17 1966

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. DeLoach

DATE: March 10, 1966

FROM : A. Rosen

SUBJECT: EUGENE THOMAS;
COLLIE LEROY WILKINS,
WILLIAM ORVILLE EATON;
MRS. VIOLA LIUZZO -
VICTIM
CIVIL RIGHTS

1 - Mr. DeLoach
1 - Mr. Wick
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines
1 - Mr. Martindale

SAC McGovern, Birmingham, advised that William Orville Eaton dropped dead of a heart attack on the night of 3/9/66. Eaton, who is one of the three subjects convicted in U. S. District Court on Federal civil rights charges in connection with the slaying of Mrs. Viola Liuzzo near Selma, Alabama, 3/25/65, was sentenced to serve ten years imprisonment. At the time of his death, he was free on appeal bond.

ACTION:

This is for information.

REC-48 44-28601-717

MAR 16 1966

WLM/mkl
(8)

UNITED STATES GOVERNMENT

Memoranaum

TO: DIRECTOR, FBI (44-23601) DATE: 2/15/66
Attn: FBI Laboratory, [redacted]

FROM: SAC, MOBILE (44-1245)(P)

SUBJECT: EUGENE THOMAS, ET AL;
VIOLA GREGG LIUZZO, aka
ET AL - VICTIMS
CR; EL
(OO: Mobile)

Re report of SA [redacted] 12/9/65, Mobile, reflecting that all three subjects were found guilty in USDC, MDA, on 12/3/65 and were sentenced to a period of ten years in custody of the Attorney General. The matter is presently on appeal to the Fifth Circuit Court of Appeals.

There is being returned herewith by Railway Express one box containing evidence utilized by [redacted] in the trial in instant case.

b7C

b7C

(3) - Bureau
1 - Package
2 - Mobile
JRC:gre
(5)

REC-23

EX-114

1 FEB 17 1966

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (44-28601) DATE: 4/21/66

FROM : SAC, NEW ORLEANS (157-3954)(P)

SUBJECT: EUGENE THOMAS, ET AL;
VIOLA GREGG LIUZZO, aka.,
ET AL - VICTIMS
CR; EL

Re New Orleans letter to Bureau, 3/10/66.

On 4/19/66, Mr. RICHARD WINDHORST, Deputy Clerk, 5th Circuit Court of Appeals, New Orleans, Louisiana, made available two copies of Order Dismissing Appeal of WILLIAM ORVILLE EATON, #23289, filed 3/17/66, copy of which is enclosed for the Bureau and Mobile.

Will advise the Bureau and Mobile of decision in this matter.

ENCLOSURE

2 - Bureau (Enc. 1)
2 - Mobile (44-1245)(Enc. 1)
2 - New Orleans

CLM/scr
(6)

EX-PROC

ST-107

REC 33

APR 25 1966

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO. 22203

WILLIAM ORVILLE EATON, CHARLIE LEROY WELLONS, JR.
and EUGENE GROOMS

Appellants

VERSUS

UNITED STATES OF AMERICA

Appellee

Appeals from the United States District Court
for the Middle District of Alabama

Before PHILLIPS, Senior Judge*, and RIVES and COLEMAN, Circuit Judges.

BY THE COURT:-

It appearing that Appellant, William Orville Eaton, is now deceased,

IT IS ORDERED that the appeal of William Orville Eaton

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Rosen

FROM : C. L. McGowan

DATE: May 10, 1966

1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines
1 - Mr. Hudson

SUBJECT: EUGENE THOMAS, ET AL;
MRS. VIOLA LIUZZO - VICTIM
CIVIL RIGHTS

At 7:15 p. m., St. John Barrett, Civil Rights Division of the Department, telephonically contacted Extra-Duty Supervisor F. J. Hudson and advised the Department has received an inquiry from Associated Press regarding a statement made by Art Haynes, attorney for the subjects, who had allegedly stated Eugene Thomas would never be brought to trial in Hayneville, Alabama, because the Federal Government would not make Gary Thomas Rowe available as a witness. Barrett wanted to be advised the first thing on the morning of 5-11-66, whether or not a request has ever been received by the Bureau concerning making Rowe available for testimony.

Supervisor [redacted] was contacted and he advised he would contact Barrett on the morning of 5-11-66.

ACTION:

For record purposes.

FJH:hw
(6)

REC 12

16 MAY 12 1966

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION
MAY 13 1966

TELETYPE

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Wick
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

FBI WASH DC

FBI MOBILE

4:30 P.M./CST URGENT 5/13/66 WEB

TO: DIRECTOR (44-28601)

FROM: MOBILE (44-1245) 4P

EUGENE THOMAS; ET AL: VIOLA GREGG LIUZZO; ET AL-VICTIMS.
CR-EL. OO MOBILE.

FOR INFORMATION OF BUREAU, FOLLOWING INFORMATION EXTRACTED FROM MONTGOMERY ADVERTISER-JOURNAL, MORNING EDITION, MAY THIRTEEN, INSTANT.

HEADLINE: ROWE "NOT AVAILABLE" FOR HAYNEVILLE TRAIL.

BYLINE: REPORT SAYS FBI INFORMANT "FED UP."

THE TRAIL OF A SECOND KU KLUX KLANSMAN ACCUSED IN THE KILLING OF CIVIL RIGHTS WORKER, VIOLA LIUZZO, WAS POSTPONED THURSDAY, REPORTEDLY BECAUSE THE FBI CANNOT LOCATE ITS STAR WITNESS, INFORMANT GARY THOMAS ROWE. ATTORNEY GENERAL RICHMOND FLOWERS SAID JUDGE T. WERTH THAGGARD INFORMED HIM THE FIRST DEGREE MURDER TRAIL OF EUGENE THOMAS WILL NOT BE CALLED NEXT WEEK IN HAYNEVILLE. FLOWERS SAID HE HAS ASKED THAT IT BE SCHEDULED FOR THE OCTOBER TERM OF COURT.

139 44-28601-123

IN THE MEANTIME, UNITED PRESS INTERNATIONAL SAID IN A STORY

69 MAY 19 1966

16 MAY 16 1966

END PAGE ONE

MO 44-1245

PAGE TWO

THURSDAY IT HAS BEEN INFORMED BY A FEDERAL OFFICAL THAT ROWE WILL NOT BE AVAILABLE FOR ANY FUTHER TESTIMONY IN THE LIUZZO CASE. UPI SAID IT WAS TOLD THAT ROWE HAS A SIGNED STATEMENT FROM THE U. S. DEPARTMENT OF JUSTICE SAYING THAT ROWE WILL NOT BE ASKED TO TESTIFY FURTHER.

THE STORY SAID ROWE HAS HAD A "BELLY FULL" OF THE CASE AND WANTS NO FURTHER PART OF IT.

BIRMINGHAM ATTORNEY ART HANES WHO TOOK OVER DEFENSE OF THE THREE KLANSMEN AFTER KLAN ATTORNEY MATT MURPHY WAS KILLED IN AN AUTOMOBILE ACCIDENT, SAID THURSDAY THAT JUDGE THAGGARD TOLD HIM THE TRAIL WAS POSTPONED BECAUSE THE FBI COULD NOT LOCATE ROWE. THAGGARD CONFIRMED THIS STATEMENT.

LOWNDES COUNTY DISTRICT ATTORNEY ARUTHUR GAMBLE SAID THAT THE FBI DID NOT ACTUALLY SAY ROWE CANNOT BE LOCATED. GAMBLE SAID HE CALLED THE FBI BEFORE THE TRAIL TO FIND OUT WHETHER ROWE WOULD BE AVAILABLE FOR TESTIMONY. HE SAID THE FBI TOLD HIM ROWE HAD BEEN TURNED OVER TO THE JUSTICE DEPARTMENT, AND THAT THE FBI WOULD CONTACT THE JUSTICE DEPARTMENT ATTORNEYS AND ASK THEM TO CONTACT GAMBLE.

END PAGE TWO

GAMBLE SAID HE NEVER HEARD FROM THEM AND THAT HE HAD NO ALTERNATIVE BUT TO ASK THAT THE CASE BE POSTPONED. HE SAID HE COULD NOT CONDUCT THE TRAIL WITHOUT "THE STAR WITNESS."

FLOWERS DENIED THE REPORT THAT ROWE COULD NOT BE FOUND. "THERE IS NO BASIS FOR SUCH A REPORT," HE SAID. "HE WILL BE AVAILABLE WHEN WE ARE READY TO TRY THE SUIT," FLOWERS TOLD UPI. UNITED PRESS QUOTED THE FEDERAL OFFICIALS SAYING "THEY (FBI) KNOW WHERE HE IS. HE JUST WON'T COME BACK TO TESTIFY. HE'S HAD A BELLY FULL, THAT'S ALL. AS I UNDERSTAND IT, HE DID NOT WANT TO TESTIFY IN FEDERAL COURT, BUT THE JUSTICE DEPARTMENT PERSUADED HIM TO. THMN HE GOT A SIGNED STATEMENT THAT HE WOULD NOT HAVE TO TESTIFY AGAIN."

HAINES ALSO TOLD THE UPI THAT ROWE DID NOT WANT TO TESTIFY AGAIN. "THE FBI HAD A HELL OF A TIME GETTING HIM TO TESTIFY IN MONTGOMERY," HE SAID.

THE ARTICLE CONTAINED OTHER BACKGROUND INFORMATION REGARDING SUBSTANTIVE CASE NOT PERTINENT TO PRESENT PUBLICITY GIVEN ROWE AND IMPENDING STATE TRAIL.

END PAGE THREE

MO 44-1245

PAGE FOUR

REGARDING DISTRICT ATTORNEY ARTHUR GAMBLE'S STATEMENT ABOVE, BUREAU HAS BEEN PREVIOUSLY ADVISED THAT ONLY CONTACT OF GAMBLE WITH MOBILE OFFICE WAS GAMBLE'S TELEPHONE CALL TO SA [redacted] b7c [redacted] APRIL TWENTY-TWO, LAST, IN WHICH GAMBLE INQUIRED CONCERNING EVIDENCE IN CASE, TO WHICH SA [redacted] REFERRED GAMBLE b7c TO THE DEPARTMENT. GAMBLE DID NOT DISCUSS GARY THOMAS ROWE WITH SA [redacted], AND NO COMMENTS REGARDING ROWE WERE MADE. P. b7c

END

WA...CORRECTIONS PAGE TWO LINE EIGHT WORD THREE

ART HAINES PAGE THREE LINE WORD FOUR "THEN"

JPM

FBI WASH DC

TU

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. DeLoach

DATE: May 11, 1966

FROM : A. Rosen

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines
1 - Mr. Wick

SUBJECT: EUGENE THOMAS, ET AL;
MRS. VIOLA LIUZZO - VICTIM
CIVIL RIGHTS

Mr. St. John Barrett, Civil Rights Division of the Department advised on 5/10/66, that the Department had received an inquiry from Associated Press regarding a statement made by Art Haynes, the attorney for the subjects in this case, who had allegedly stated that Eugene Thomas would never be brought to trial on the state murder charge in Hayneville, Alabama, because the Federal Government would not make Gary Thomas Rowe available as a witness. Barrett desired to know whether or not a request had ever been received by the Bureau concerning making Rowe available to the state for testimony.

It is noted that of the three subjects in this matter, Collie Leroy Wilkins was tried by the state for the murder of Mrs. Liuzzo and was acquitted. Subject William Orville Eaton who was not tried by the state is now deceased. Subject Eugene Thomas has never been tried on the state charges. The Government produced Rowe to testify before the state grand jury and in the two state trials involving the subject Wilkins. The Bureau has received no request to produce Rowe to testify at the state trial of Eugene Thomas. A check was made with the Birmingham and Mobile Offices and they advised that no such request had been received by those offices. Mobile advised that the only contact they had received from state authorities with regard to this matter was on 5/10/66.

5/10/66 Alabama Attorney General Richmond Flowers on that date called SA [redacted] for the purpose of advising him that in the future Circuit Solicitor Arthur Gamble would have absolutely nothing to do with the case involving Eugene Thomas. He said that the state might bring Eugene Thomas to trial in the Fall of this year at which time they might want us to locate Rowe. He made no request and SA [redacted] did not comment on the matter one way or the other.

b7
b7c

JWH/par
(7)

CONTINUED - OVER

REC-82

MAY 16 1966

Memorandum to Mr. DeLoach
RE: EUGENE THOMAS, ET AL;

Mr. St. John Barrett on 5-11-66, was advised of the above information. He was specifically advised that the FBI had not received any request concerning making Rowe available to the state for testimony. Mr. Barrett was also advised that in the event such a request was received by the Bureau, it would be immediately referred to the Department.

ACTION:
For information.

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Rosen

DATE: May 12, 1966

FROM : C. L. McGowan

1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines
1 - Mr. Hudson

SUBJECT: EUGENE THOMAS, ET AL.
MRS. VIOLA LIUZZO - VICTIM
CIVIL RIGHTS

Tolson
DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

At 11:30 p. m., 5-12-66, SAC James McGovern, Birmingham, telephonically advised the Bureau that United Press International had contacted him at 9:15 p. m., Central Standard Time (11:15 p. m., Eastern Daylight Time). The reason for calling was that a story was circulating attributed to Art Haynes, attorney for the subjects, to the effect that the state trial of Eugene Thomas was called off because the FBI cannot find Gary Thomas Rowe, the informant. SAC McGovern replied to UPI's inquiry with "No comment."

SAC McGovern also stated that UPI said a second story was circulating attributed to a "reliable Federal official" in Montgomery, Alabama, to the effect the FBI knows where Rowe is but that Rowe is reluctant to testify in view of the fact he has previously testified on the same matter.

SAC McGovern advised there has been no request made of the Birmingham Office nor has there been any request made of the Mobile Office regarding the whereabouts or availability of Gary Thomas Rowe.

The Civil Rights Division of the Department advised on 5-10-66, that an Associated Press inquiry had been received concerning the same information.

REC-82 105-4-

ACTION:

Crime Records Division has been advised.

16 MAY 16 1966

FJH:hw
(6)

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Rosen

FROM : C. L. McGowan

DATE: May 12, 1966

1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines
1 - Mr. Hudson

SUBJECT: EUGENE THOMAS, ET AL.
MRS. VIOLA LIUZZO - VICTIM
CIVIL RIGHTS

Tolson
DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

At 8:15 p.m., 5-12-66, Extra-Duty Supervisor [redacted] talked with ASAC Edward S. Miller at Mobile concerning the information the Department received relative to Solicitor Arthur Gamble allegedly having inquiried of SA [redacted] three or four months ago concerning the availability of informant Rowe to testify at the state trial of Thomas.

ASAC Miller advised that Gamble did not contact [redacted] relative to Rowe being made available to testify and in fact [redacted] has not talked to Gamble since September or October, 1965. ASAC Miller further advised that Gamble has not discussed the subject with any Agents of the Mobile Office regarding Rowe's availability.

On 4-22-66, Gamble did telephonically contact SA [redacted] at the Selma, Alabama, Resident Agency and said he was preparing his case for trial and inquired regarding evidence. He did not make any inquiries concerning Rowe. SA [redacted] advised Gamble that any questions he had should be directed to the Department of Justice.

ASAC Miller also advised he talked with SAC McGovern at Birmingham who stated Gamble has not contacted any Birmingham Agents regarding Rowe's availability.

ACTION:

For record purposes.

REC-82 [illegible]-28601-1
ST-105
11 MAY 16 1966

FJH:hw
(6)

Mr. John Doar
Assistant Attorney General

May 16, 1966

Director, FBI

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines
1 - Mr. Wick

EUGENE THOMAS, AND OTHERS;
MRS. VIOLA LIUZZO - VICTIM
CIVIL RIGHTS

This will confirm information furnished to Mr. St. John Barrett of the Civil Rights Division on May 10, 1966, in response to his inquiry concerning a statement allegedly made by Art Haynes, the attorney for Eugene Thomas, who reportedly stated that Thomas would never be brought to trial on the state charge of murder in connection with Mrs. Viola Liuzzo's death, because the Federal Government would not make Gary Thomas Rowe available as a witness.

On May 11, 1966, Mr. Barrett was advised that the FBI had not received any request to make Rowe available to the state for testimony, and that in the event such a request was received by the Bureau, it would be immediately referred to the Department.

Mr. Barrett's attention was called to a contact made by Alabama Attorney General Richmond Flowers with Special Agent [redacted] of our Mobile Office on May 10, 1966, wherein Mr. Flowers advised [redacted] that in the future Circuit Solicitor Arthur Gamble would have nothing to do with the case involving Eugene Thomas. Flowers said that the State of Alabama might bring Thomas to trial in the Fall of this year, at which time they might want the FBI to locate Rowe. He made no request and Special Agent [redacted] did not comment on the matter one way or the other.

b7c

On May 12, 1966, Mr. Barrett advised that the Department had received information indirectly to the effect that Solicitor Arthur Gamble had made inquiry of Special Agent [redacted] Resident Agent at Selma, Alabama, about three months ago concerning the availability of Rowe to testify at the state trial of Thomas. Mr. Barrett requested that he be furnished details of any such contact.

REC-82 44-2[illegible]

JWH:rmr
(9)

NOTE: See Memo Rosen to DeLoach, 5-13-66, same caption.

ST-105

19 MAY 16 1966

MAIL ROOM TELETYPE UNIT

69 MAY 25 1966

MAILED 4
MAY 16 1966
COMM-FBI

Mr. John Doar

In response to this request, Special Agent [redacted] b7c
[redacted] states that Solicitor Gamble has not contacted him relative to Rowe being made available to testify. He stated further that he has not talked to Gamble since September or October, 1965. On April 22, 1966, Solicitor Gamble did telephonically contact Special Agent [redacted] b7c
[redacted] at Selma, Alabama. He said that he was preparing the Thomas case for trial and inquired regarding the evidence. He did not make any inquiries concerning Rowe. Special Agent [redacted] b7c advised Solicitor Gamble that any questions he had should be directed to the Department of Justice and he did not comment further concerning the matter.

Recent statements have appeared in the public press concerning the availability of Gary Thomas Rowe for testimony in the state trial of Eugene Thomas. You may be assured that the FBI has made no comment to the press whatever concerning Rowe or his availability to testify.

GSA GEN. REG. NO. 27

UNITED STATES GOVERNMENT

Memoranaum

TO : Mr. DeLoach

DATE: May 16, 1966

FROM : R. E. Wick

SUBJECT: EUGENE THOMAS, ET AL.;
MRS. VIOLA LIUZZO - VICTIM
CIVIL RIGHTS

Reference is made to memorandum from Mr. Rosen to Mr. DeLoach dated May 13th, copy attached, in which it was recommended and approved that John Doar, Assistant Attorney General, Civil Rights Division, Department of Justice, be assured that the FBI had made no comment whatsoever to the press re the availability of Gary Thomas Rowe to testify in the forthcoming state murder trial of Eugene Thomas. On this memorandum, the Director noted: "O.K. but I don't understand why we don't tell anyone contacting our Field representatives to contact the Dept.as we have nothing more to do in Federal Field in this case. H."

In accordance with the Director's instructions, we will continue to refer any inquiries we receive from the press concerning this matter to the Department.

RECOMMENDATION:

None. For information.

Enclosure

1 - Mr. DeLoach
1 - Mr. Rosen

TEB:par
(4)

REC 29

57 MAY 26 1966

MAY 1966

UNITED STATES GOVERNMENT

Memorandum

TO Mr. DeLoach

DATE: May 13, 1966

FROM A. Rosen

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines
1 - Mr. Wick

SUBJECT: EUGENE THOMAS, ET AL.;
MRS. VIOLA LIUZZO - VICTIM
CIVIL RIGHTS

The United Press International in a release dated 5-12-66 stated "FBI informer Gary Thomas Rowe will not testify again against three Ku Klux Klansmen in connection with the nightrider slaying of Mrs. Viola Liuzzo. The release quoted a Federal official who refused to be identified as stating that Rowe "has had a belly full." "They (the FBI) know where he is, he just won't come back to testify." The release further quoted the Federal official as stating that Rowe did not want to testify in Federal Court in the Federal trial in December, 1965, which resulted in conviction of the three subjects but the Justice Department pursuaded him to and he then got a signed statement that he would not have to testify again.

As you were advised by my memorandum of 5-11-66, Mr. St John Barrett of the Civil Rights Division on 5-10-66 advised that Department had received an inquiry from Associated Press regarding a statement made by Art Haynes, the attorney for Eugene Thomas to the effect that Thomas would never be brought to trial on a state murder charge because the Federal Government would not make Gary Thomas Rowe available as a witness. Barrett inquired as to whether or not a request to produce Rowe for testimony in a state trial had been received by the Bureau.

Barrett was advised on 5-11-66 after a check with our Mobile and Birmingham Offices that the FBI had not received any request to make Rowe available to the State for testimony.

Enclosure sent 5-16-66

COPY SENT TO MR. TOLSON

JWH:cnj

CONTINUED - OVER

ENCLOSURE

Memorandum to Mr. DeLoach
RE: EUGENE THOMAS

Barrett was advised Alabama Attorney General Richmond Flowers on 5-10-66 had contacted SA [redacted] of the Mobile Office for the purpose of advising him that in the future Circuit Solicitor Arthur Gamble would have nothing to do with the case involving Eugene Thomas. He told [redacted] that the state might bring Thomas to trial in the fall, at which time they might want the FBI to locate Rowe. Flowers made no request and SA [redacted] did not comment on the matter one way or the other. Barrett was advised that if any such request was received by the Bureau it would be immediately referred to the Department.

Subsequent to above on 5-12-66 Barrett advised that the Department had received a rumor from the press that Solicitor Arthur Gamble had made inquiry of SA [redacted] Resident Agent of Selma, Alabama, three or four months ago concerning the availability of Rowe to testify at the state trial of Thomas. Barrett desired to know if there was any merit to this rumor.

SA [redacted] has advised that Solicitor Gamble did not contact him relative to Rowe being made available to testify and Frye stated that he has not talked to Solicitor Gamble since September or October, 1965, which was prior to the Federal trial of Thomas and the other two subjects.

ASAC Edward S. Miller of the Mobile Office on 5-12-66 advised that Solicitor Gamble has not discussed the subject of availability of Rowe with any Agents of the Mobile Office. He said that on 4-22-66 Gamble telephonically contacted SA [redacted] at Selma, Alabama, and said that he was preparing the Thomas case for trial and inquired regarding evidence. He did not make any inquiry concerning Rowe. SA [redacted] advised Gamble that any questions he had should be directed to the Department of Justice and made no further comment. This information was furnished to Mr. Barrett on 5-13-66.

On the night of 5-12-66 SAC McGovern of the Birmingham Office advised that United Press International had contacted him at 9:15 p.m. and advised him that a story was circulating attributed to Art Haynes, attorney for Thomas to the effect that the state trial of Thomas was called off because the FBI cannot find Gary Thomas Rowe. SAC McGovern answered the United Press International inquiry with "no comment."

Memorandum to Mr. DeLoach
RE: EUGENE THOMAS

As indicated above the Department has been receiving inquiries from the press and it is true that Rowe did not want to testify in the Federal trial of the three subjects in Hayneville, Alabama, in late November, 1965.

[redacted] b7A

ACTION:

Attached for approval is a letter to John Doar, Assistant Attorney General, Civil Rights Division, confirming the information furnished to Mr. Barrett, and assuring him that the FBI has made no comment whatever to the press relative to the availability of Rowe for testimony.

Ok but I don't understand why we don't tell anyone contacting our field representatives to contact the Dept as we have nothing more to do in Federal building this case.

DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

Around the Nation

A9

Liuzzo Trial

MONTGOMERY, Ala. The murder trial of Ku Klux Klansman Eugene Thomas in the slaying of civil rights worker Viola Liuzzo has been delayed until the fall term at the request of a state's attorney.

District Attorney Arthur E. Gamble said he asked for the delay because he had heard nothing from the Justice Department when he asked whether the chief witness, FBI informer Gary Thomas Rowe, would be on hand to testify when the trial began Monday. There had been reports that Rowe did not want to testify.

The Justice Department in Washington said Rowe would have been available to testify.

The Washington Post and A 9
Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Daily News
New York Post
The New York Times
The Baltimore Sun
The Worker
The New Leader
The Wall Street Journal
The National Observer
People's World
Date

MAY 14 1966

ENCLOSURE

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (44-28601)

DATE: 5/23/66

FROM : SAC, NEW ORLEANS (157-3954) (P)

SUBJECT: EUGENE THOMAS, ETAL;
VIOLA GREGG LIUZZO, Aka.,
ET AL - VICTIMS
CR; EL

Re New Orleans letter to Bureau, 4/21/66.

On 5/18/66, Mr. RICHARD WINDHORST, Deputy Clerk, Fifth Circuit Court of Appeals, New Orleans, La., advised that the printed record was filed 5/3/66.

Will advise the Bureau and Mobile of decision in this matter.

2 - Bureau
2 - Mobile (44-1245)
2 - New Orleans

CLM/med
(6)

REC- 18 44-28601-729

MAY 27 1966

JUN 1966

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

UNITED STATES GOVERNMENT

Memorandum

TO Mr. DeLoach

DATE: May 13, 1966

FROM A. Rosen

SUBJECT: EUGENE THOMAS, ET AL.;
MRS. VIOLA LIUZZO - VICTIM
CIVIL RIGHTS

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Hines
1 - Mr. Wick

The United Press International in a release dated 5-12-66 stated "FBI informer Gary Thomas Rowe will not testify again against three Ku Klux Klansmen in connection with the nightrider slaying of Mrs. Viola Liuzzo. The release quoted a Federal official who refused to be identified as stating that Rowe "has had a belly full." "They (the FBI) know where he is, he just won't come back to testify." The release further quoted the Federal official as stating that Rowe did not want to testify in Federal Court in the Federal trial in December, 1965, which resulted in conviction of the three subjects but the Justice Department pursuaded him to and he then got a signed statement that he would not have to testify again.

As you were advised by my memorandum of 5-11-66, Mr. John Barrett of the Civil Rights Division on 5-10-66 advised that Department had received an inquiry from Associated Press regarding a statement made by Art Haynes, the attorney for Eugene Thomas to the effect that Thomas would never be brought to trial on a state murder charge because the Federal Government would not make Gary Thomas Rowe available as a witness. Barrett inquired as to whether or not a request to produce Rowe for testimony in a state trial had been received by the Bureau.

Barrett was advised on 5-11-66 after a check with our Mobile and Birmingham Offices that the FBI had not received any request to make Rowe available to the State for testimony.

Enclosure 5-12-66

COPY SENT TO MR. TOLSON

JWH:cry (7)

CONTINUED - OVER

RLC 33

MAY 31 1966

Memorandum to Mr. DeLoach
RE: EUGENE THOMAS

Barrett was advised Alabama Attorney General Richmond Flowers on 5-10-66 had contacted SA [redacted] of the Mobile Office for the purpose of advising him that in the future Circuit Solicitor Arthur Gamble would have nothing to do with the case involving Eugene Thomas. He told [redacted] that the state might bring Thomas to trial in the fall, at which time they might want the FBI to locate Rowe. Flowers made no request and SA [redacted] did not comment on the matter one way or the other. Barrett was advised that if any such request was received by the Bureau it would be immediately referred to the Department.

Subsequent to above on 5-12-66 Barrett advised that the Department had received a rumor from the press that Solicitor Arthur Gamble had made inquiry of SA [redacted] Resident Agent of Selma, Alabama, three or four months ago concerning the availability of Rowe to testify at the state trial of Thomas. Barrett desired to know if there was any merit to this rumor.

SA [redacted] has advised that Solicitor Gamble did not contact him relative to Rowe being made available to testify and [redacted] stated that he has not talked to Solicitor Gamble since September or October, 1965, which was prior to the Federal trial of Thomas and the other two subjects.

ASAC Edward S. Miller of the Mobile Office on 5-12-66 advised that Solicitor Gamble has not discussed the subject of availability of Rowe with any Agents of the Mobile Office. He said that on 4-22-66 Gamble telephonically contacted SA [redacted] at Selma, Alabama, and said that he was preparing the Thomas case for trial and inquired regarding evidence. He did not make any inquiry concerning Rowe. SA [redacted] advised Gamble that any questions he had should be directed to the Department of Justice and made no further comment. This information was furnished to Mr. Barrett on 5-13-66.

On the night of 5-12-66 SAC McGovern of the Birmingham Office advised that United Press International had contacted him at 9:15 P.M. and advised him that a story was circulating attributed to Art Haynes, attorney for Thomas to the effect that the state trial of Thomas was called off because the FBI cannot find Gary Thomas Rowe. SAC McGovern answered the United Press International inquiry with "no comment."

Memorandum to Mr. DeLoach
RE: EUGENE THOMAS

As indicated above the Department has been receiving inquiries from the press and it is true that Rowe did not want to testify in the Federal trial of the three subjects in Hayneville, Alabama, in late November, 1965.

[redacted] b7A

ACTION:

Attached for approval is a letter to John Doar, Assistant Attorney General, Civil Rights Division, confirming the information furnished to Mr. Barrett, and assuring him that the FBI has made no comment whatever to the press relative to the availability of Rowe for testimony.

Off hand I don't understand why we don't tell anyone anything our field representatives to contact the Dept as we have nothing more to do in federal civil rights cases.

DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

Around the Nation

Liuzzo Trial

MONTGOMERY, Ala. The murder trial of Ku Klux Klansman Eugene Thomas in the slaying of civil rights worker Viola Liuzzo has been delayed until the fall term at the request of a state's attorney.

District Attorney Arthur E. Gamble said he asked for the delay because he had heard nothing from the Justice Department when he asked whether the chief witness, FBI informer Gary Thomas Rowe, would be on hand to testify when the trial began Monday. There had been reports that Rowe did not want to testify.

The Justice Department in Washington said Rowe would have been available to testify.

The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Daily News
New York Post
The New York Times
The Baltimore Sun
The Worker
The New Leader
The Wall Street Journal
The National Observer
People's World
Date

44-[illegible]-13

ENCLOSURE

MAY 14 1966

5-16-66

PLAINTEXT

TELETYPE ST-103 DEFERRED

REC 33 44-35601-730 1 - Mr. Hines

TO: SACs, BIRMINGHAM AND MOBILE
FROM: DIRECTOR, FBI

EUGENE THOMAS, ET AL.; MRS. VIOLA LIUZZO - VICTIM
CIVIL RIGHTS.

U. S. Department of Justice
Communications Section
MAY 16 1966
TELETYPE

REMOBILETEL FIVE THIRTEEN LAST.

THE BUREAU'S OBLIGATIONS AND RESPONSIBILITIES AS AN INVESTIGATIVE AGENCY WERE FULFILLED UPON COMPLETION OF SUCCESSFUL FEDERAL PROSECUTION IN THIS MATTER AND THE FBI HAS NOTHING MORE TO DO IN THE FEDERAL FIELD IN THIS CASE. INSURE THAT ALL PERSONNEL OF YOUR OFFICES WHO ARE CONTACTED CONCERNING THE AVAILABILITY OF EVIDENCE OR WITNESSES OR FOR ANY OTHER REASON CONCERNING THIS CASE ADVISE THE PERSON CONTACTING THEM SPECIFICALLY TO CONTACT JOHN DOAR, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE AND MAKE NO FURTHER COMMENT.

ADVISE THE BUREAU PROMPTLY OF THE RECEIPT OF ANY CONTACTS BY YOUR RESPECTIVE OFFICES CONCERNING THIS CASE AND SPECIFICALLY WHAT THE PERSON CONTACTING A REPRESENTATIVE OF YOUR OFFICE WAS TOLD. [illegible]

AIRTEL COPY TO SAN FRANCISCO.

1 - San Francisco

JWH:cxy (4)

NOTE: Above instructions being forwarded to offices involved in handling of this case and of informant Rowe pursuant to instruction of the Director. See memo Rosen to DeLoach dated 5-13-66.

Tolson
DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

MAIL ROOM ☐ TELETYPE UNIT ☑

b7C

[redacted]

6-27, 1966

Mr. J. E. Hoover,

Hon. Sir: I note in your explanation of your duties, in Human Events, you did not say why one of your Agents rode along with the man who is accused of shooting Mrs. Luigi last year, and did nothing to prevent her slaying. In other words, your agent was there aiding and abetting her murder, for the purpose of getting "evidence" for your files. If that isn't the sneakenest way to get the knowledge you want, I am a goat.

God knows he could have prevented her loss of life had he not been a sneak with power of the law behind him, And your office. This Johnson Mess, is the blackest page in our history. Every one Connected, even blacker than these Communist Negroes you are so prone to push down the throats of those who are gagged by that So Called Rights law. And all for cheap, dirty, Politics to Elect Even Cheaper and dirtier creatures to office. Shame.

[redacted]

COPY mjm

Viola Luzzo

EX-103
REC-1 77-28601-1

JUL 6 1966

CORRESPONDENCE

53 JUL 13 1966

Mr. J. E. Hoover, 11-6-27,

Dear Sir: I note in your explanation of yo
duties, in Human Events, you did not e
why one of your agents rode along with
the man who is accused of shooting Dr.
last year, and did nothing to prevent h
playing. In other words, your agent wa
third aiding and abetting her murder,
the purpose of getting "evidence" for your fi
If that isn't the sneakiest way to get
knowledge you want, I am a goat.
God knows he could have prevented her
of life, had he not been a sneak with no
of the law behind him. And your office,
this Johnson Mess, is the blackest page in
history. Everyone connected, even blacker tha
these Communist negroes you are so
to push down the throats of those wh
are gagged by that so called Right law
And all for cheap, dirty politics to elect R
R. and his old dirtier creatures to office. Sha

RE: J. E. [illegible] DEC: 12

JUN 28 1966

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Wick

DATE: 6-30-66

FROM : D. C. Morrell

SUBJECT: [redacted] b7c

By letter dated June 27th to the Director, captioned individual accuses this Bureau of aiding and abetting in the murder of Mrs. Luigi in as much as one of our "Agents" was present when she was shot and did nothing to prevent it.

The general tenor of his letter indicates that he is a racist and against the present administration. His communication is generally intemperate and irrational and does not warrant a response. Accordingly, captioned individual's communication will not be acknowledged.

RECOMMENDATION:

That captioned individual's letter not be acknowledged.

1 - Mr. Wick - Enclosure

DFC:jls
(3)

REC-1 44-28601-73

EX-103

4 JUL 6 1966

53 JUL 13 1966

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (44-28601)

DATE: 6/24/66

FROM : SAC, NEW ORLEANS (157-3954) (P)

SUBJECT: EUGENE THOMAS, ET AL;
VIOLA GREGG LIUZZO, aka.,
et al - VICTIMS
CR: EL

Re New Orleans letter to Bureau, 5/23/66.

On 6/21/66, Mr. RICHARD WINDHORST, Fifth Circuit Court of Appeals, New Orleans, La., made available 2 copies of Brief for Appellants, Number 23289 filed 6/20/66, copy of which is enclosed for the Bureau and Mobile.

Will advise the Bureau and Mobile of decision in this matter.

(2) - Bureau (Enc. 1)
2 - Mobile (44-1245) (Enc. 1)
2 - New Orleans
CLM/jmc
(6)

ENCLOSURE

REC-38

EX-110

56 JUL 13 1966

44-28601-734

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 23289

COLLIE LEROY WILKINS, JR., and
EUGENE THOMAS,

Appellants

versus

UNITED STATES OF AMERICA,

Appellee

APPEALS FROM THE UNITED STATES
DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

BRIEF FOR APPELLANTS

Attorneys for Appellants:
ARTHUR J. HANES
Suite 506
Frank Nelson Building
Birmingham, Alabama 35203

FRED BLANTON, JR.
Suite 1627
Twenty-One Twenty-One Building
Birmingham, Alabama 35203

INDEX

1. The court erred in denying appellants' motion to dismiss the indictment (R. 16-17).

2. The court erred in denying appellants' motion for a bill of particulars (R. 16-17).

3. The court erred in admitting over objection the following testimony and evidence:

   A. U. S. Exhibits 1 and 2 (R. 194-195).
   B. U. S. Exhibits 3 and 4 (R. 204; 208-9).
   C. U. S. Exhibits 6, 13 through 18 (R. 400).
   D. U. S. Exhibit 10 (R. 400).

CITATIONS

Cases:

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 23289

COLLIE LEROY WILKINS, JR., and EUGENE THOMAS,

Appellants

versus

UNITED STATES OF AMERICA,

Appellee

STATEMENT OF THE CASE

In Criminal Case No. 11,736-N, United States District Court, Middle District of Alabama, a true bill against appellants, Collie Leroy Wilkins, Jr.* and Eugene Thomas,* and also William Orville Eaton,(1) was filed on April 6, 1965 (R. 2-4).

Such indictment charged a conspiracy in violation of Title 18, Section 241, United States Code, "to injure, oppress, threaten and intimidate citizens of the United States in the vicinity of Selma and Montgomery, Alabama in the free exercise and enjoyment of certain rights and privileges secured to them by the

---

*In this brief, in matters pertaining to only one appellant, Wilkins will be referred to as: CLW, R., and Thomas as: ET, R.

(1) William Orville Eaton also appealed his conviction, but subsequent to docketing this cause he died; and upon notification of such fact, this Court did, on March 17, 1966, dismiss the appeal as to him as moot.

Constitution and laws of the United States, and because of their having exercised such rights." (R. 2)

One specific right of these unnamed citizens alleged to have been abridged in said manner by indictees was, among others. The right to participate in a protest march pursuant to a plan approved by the United States District Court, Middle District of Alabama (R. 3).

Appellants were arrested on April 7, 1965, and each released on bond of $50,000 (CLW, R. 5-6; ET, R. 6-7). They were arraigned by the Court on November 5, 1965, and each pleaded "Not Guilty" (R. 7-10).

A motion to dismiss the indictment was filed on November 19, 1965 (R. 15-16), after proceedings about said motion were held on the preceding day (R. 18-37). The ultimate basis for such motion was that the indictment did not state facts sufficient to constitute an offense against the United States (R. 16). The Court overruled the motion to dismiss informally (R. 37); later a formal order was entered (R. 16-17). Appellants contend this was error.

A motion for a bill of particulars was also filed on November 19, 1965 (R. 10-15), after proceedings about said motion were held on the preceding day (R. 38-47). The basic thrust of this motion was to obtain from the United States the name and address of any person defendants were alleged to have conspired to injure, oppress, threaten and intimidate as laid in the indictment (R. 10-14). In a colloquy between the Court and counsel for the United States (R. 38-41; 46-47) the following statements are of particular interest:

> Mr. Doar: "We contend that the defendants conspired to injure members of a class of people; the people are those persons that were engaged in the march from Selma to Montgomery, and those persons are identified; we don't claim any individual person." (R. 39)
>
> * * *
>
> Mr. Doar: "It is our claim they were engaged in the conspiracy to harass that class of persons; it wasn't against any particular person; they didn't — their conspiracy was not directed against a particular person." (R. 40)
>
> The Court: "All right. So there won't be any misunderstanding, if I understand your case, it is that the conspiracy wasn't directed to harass and intimidate and threaten, oppress any particular person, but the effect of it may have been." (R. 40-41)
>
> Mr. Doar: "That's right." (R. 41)

The Court overruled the motion of defendants for a bill of particulars (R. 17). Appellants assert this was manifest error.

Prior to the commencement of the trial on November 29, 1965, before the Honorable Frank M. Johnson, Jr., Judge, and a jury at Montgomery, Alabama, certain proceedings were held in chambers, of which the following is deemed significant: The Court, at R. 139-140, indicated the United States had approached him about certain matters concerning a Mrs. Luizzo, her murder on the Selma-Montgomery highway being a matter of common knowledge. It was strong by implication here the immediately forthcoming trial would in effect evolve around this specific occurrence (R. 141), and counsel for defendants appropriately noted that on argument to dismiss the indictment and for a bill of particulars he was led to understand the alleged activities of defendants were directed against a *class* and not any *individual* (R. 140).

Constitution and laws of the United States, and because of their having exercised such rights." (R. 2)

One specific right of these unnamed citizens alleged to have been abridged in said manner by indictees was, among others: The right to participate in a protest march pursuant to a plan approved by the United States District Court, Middle District of Alabama (R. 3).

Appellants were arrested on April 7, 1965, and each released on bond of $50,000 (CLW, R. 5-6; ET, R. 6-7). They were arraigned by the Court on November 5, 1965, and each pleaded "Not Guilty" (R. 7-10).

A motion to dismiss the indictment was filed on November 19, 1965 (R. 15-16), after proceedings about said motion were held on the preceding day (R. 18-37). The ultimate basis for such motion was that the indictment did not state facts sufficient to constitute an offense against the United States (R. 16). The Court overruled the motion to dismiss informally (R. 37); later a formal order was entered (R. 16-17). Appellants contend this was error.

A motion for a bill of particulars was also filed on November 19, 1965 (R. 10-15), after proceedings about said motion were held on the preceding day (R. 38-47). The basic thrust of this motion was to obtain from the United States the name and address of any person defendants were alleged to have conspired to injure, oppress, threaten and intimidate as laid in the indictment (R. 10-14). In a colloquy between the Court and counsel for the United States (R. 38-41; 46-47) the following statements are of particular interest:

> Mr. Doar: "We contend that the defendants conspired to injure members of a class of people; the people are those persons that were engaged in the march from Selma to Montgomery, and those persons are identified; we don't claim any individual person." (R. 39)
>
> * * *
>
> Mr. Doar: "It is our claim they were engaged in the conspiracy to harass that class of persons; it wasn't against any particular person; they didn't — their conspiracy was not directed against a particular person." (R. 40)
>
> The Court: "All right. So there won't be any misunderstanding, if I understand your case, it is that the conspiracy wasn't directed to harass and intimidate and threaten, oppress any particular person, but the effect of it may have been." (R. 40-41)
>
> Mr. Doar: "That's right." (R. 41)

The Court overruled the motion of defendants for a bill of particulars (R. 17). Appellants assert this was manifest error.

Prior to the commencement of the trial on November 29, 1965, before the Honorable Frank M. Johnson, Jr., Judge, and a jury at Montgomery, Alabama, certain proceedings were held in chambers, of which the following is deemed significant: The Court, at R. 139-140, indicated the United States had approached him about certain matters concerning a Mrs. Luizzo, her murder on the Selma-Montgomery highway being a matter of common knowledge. It was strong by implication here the immediately forthcoming trial would in effect evolve around this specific occurrence (R. 141), and counsel for defendants appropriately noted that on argument to dismiss the indictment and for a bill of particulars he was led to understand the alleged activities of defendants were directed against a *class* and not any *individual* (R. 140).

The evidence adduced at the trial is of importance to the position of these appellants. To assist the Court and to substantiate the position of appellants that the United States failed to sustain its burden a concise narrative statement of the relevant and significant testimony and other evidence is presented.[2] A motion as for a judgment of acquittal was denied (R. 823).

The Honorable John Doar for the United States opened (R. 189-193), and it was clear the damning point to be proved against defendants was the murder of a Mrs. Luizzo. Counsel for defendants relied on pleas of "Not Guilty" (R. 193).

U. S. Exhibit 1 was a certified copy of the order of the United States District Court, Middle District of [illegible]a, of March 17, 1965, which concerned a pro[illegible]n of march of certain people from Selma to Montgomery, Alabama (R. 194). U. S. Exhibit 2 was a certified copy of the order of this Court dated March 19, 1965, which declined to stay the proposed plan of march (R. 195).

L. B. SULLIVAN testified he was Commissioner of Public Affairs of Montgomery, Alabama (R. 196). He knew of a march of certain Negro and white citizens from Selma to Montgomery in March, 1965, pursuant to an order of theUnited States District Court (R. 196-197). Witness had a request for a parade permit dated March 20, 1965, from Fred Vann on behalf of the Knights of the Ku Klux Klan of America, Inc. (R. 199). Witness stated he had authority to issue parade permits for the Commission (R. 201). U. S. Exhibit 3 was the parade permit request of March 20, 1965 (R. 203), and U. S. Exhibit 4 was the approval of such request dated March 21, 1965 (R. 204). Over objection (R. 208), Exhibits 3 and 4 were admitted into evidence (R. 209).

(2) The proceedings anent the selection of a jury (R. 149-187) and other matters have been included in the record on appeal not for the purpose of unduly extending it, but solely for the purpose of allowing this Court, if it so sees fit, to savor the flavor of the entire trial below.

The parade was to take place on March 21, 1965, "to protest order issued by Federal Court allowing a five day demonstration march from Selma, Alabama, to Montgomery, Alabama." (R. 209) The colloquy between the Court and Mr. Doar emphatically showed Exhibits 3 and 4 were admitted for a limited purpose and not one extending to any rights exercised by defendants (R. 210).

There was another parade in Montgomery after the one of March 21, 1965, the Selma to Montgomery affair (R. 214). This parade proceeded from the St. Jude area along its court-outlined route to the Capitol, and included several thousand persons who remained in front of the Capitol for three to four hours (R. 215).

On cross examination by Mr. Hanes, Sullivan testified there were no incidents during the Klan parade of March 21, 1965 (R. 215); no trouble was caused; the parade proceeded quietly (R. 216).

The crowd on March 25, 1965—the Selma to Montgomery march — was estimated between 20 and 30 thousand (R. 216). The march was a walking one composed of males and females, white and colored. Sullivan concluded his testimony by stating on redirect examination the march of March 25, 1965, was orderly (R. 218).

WILLIAM RAYNES JONES stated he lived in Montgomery, and was Chief of the Investigative and

Identification Division, Department of Public Safety, during March, 1965 (R. 219-220). He received in his official capacity information there was to be a parade by the United Knights of the Ku Klux Klan on March 21, 1965 (R. 220-221). Four men were detailed, 2 to participate in and 2 to observe this parade (R. 221-222).

PAUL JAMES DUMAS testified he lived in Montgomery, and for 5 years had been with the police department (R. 224). He was on duty on March 21, 1965, and attended the motorcade and rally at Cramton Bowl, and had Sergeant Farr in the car with him (R. 225). Sergeant Farr obtained photographs and both took automobile license numbers (R. 226). U. S. Exhibits 13 through 18 were marked for identification (R. 227-228), and generally they purported to present scenes at Cramton Bowl on March 21st (R. 229). U. S. Exhibit 6, consisting of 3 photographs, was marked for identification (R. 234). Witness testified they were pictures of the rally at Cramton Bowl (R. 235).

Dumas on cross examination testified he did not take any photographs personally; he saw someone from his department take photographs; he recognized the photographs shown to him previously (R. 240-241).

On the occasion of the meeting on the 21st at the field, there was no commotion; there were no public affrays; and witness did not hear any threats made (R. 242).

WALTER RAY BUTTS informed the Court and jury he lived in Montgomery and was news director of WCOV radio and television and held such position on March 21, 1965 (R. 246-247). Butts took pictures on the 21st of a Klan motorcade in Montgomery. U. S.

Exhibit 10, consisting of 3 photographs, and U. S. Exhibit 11, consisting of 2 photographs, were marked for identification (R. 247). As to U. S. Exhibit 10, the pictures were described as accurate portrayals of a close up and the side of an automobile; they were taken on Dexter Avenue, just below the Judicial Building (R. 248-249). U. S. Exhibit 11 consisted of 2 more pictures of cars in the motorcade (R. 249).

ROBERT C. ROTON identified himself as a resident of Montgomery employed as Supervisor of Motor Vehicle Division, State Department of Revenue (R. 250). Roton had with him 2 registration receipts of vehicles (R. 250-251). These were marked for identification U. S. Exhibits 7 and 8 (R. 251-252). Witness described the general contents of the documents, including, *inter alia*, tag number and name and address of licensee (R. 253).

HAROLD R. CHARRON, JR., testified he was a special agent with FBI, stationed in Washington, D. C.; was engaged on his official duties in Montgomery, Alabama, on March 21, 1965; was observing a motorcade at a parking lot across from Cramton Bowl. U. S. Exhibits 13 through 18, a series of photographs, were displayed to witness (R. 257) and he identified them as enlargements of pictures he had taken on the day in question (R. 258).

On cross examination, witness stated his primary assignment that day was to take photographs of the crowd, etc. (R. 259-260), but he did note some license numbers. *Witness stated he did not hear anybody on that occasion threaten to injure, oppress, or intimidate anyone* and he was there from almost the beginning to the end of the gathering (R. 260).

STEPHEN J. FEARON identified himself as a

special agent of FBI, and he was on official duties on March 21, 1965, in Montgomery (R. 262). Witness stated he was to observe the motorcade; he took down some license numbers of cars; he was driving a car in the vicinity of Cramton Bowl; he would call out tag numbers as he observed them, and another agent in the car, Beverstein, would write them down; and also he, Beverstein, would write down ones he observed. Witness was engaged in this about 1½ hours (R. 263).

On cross examination, witness stated he went to the field shortly after noon, about 12:30 P. M., and cars had begun to gather (R. 265). After about an hour, there were over 100 cars and about 200 to 250 people (R. 265-266).

procedure for listing automobile tag numbers, ...ght out on direct examination, was reiterated (R. 266-267); but witness stated he did not know whether the numbers he called out were written on the sheet or not. Witness was at the meeting more or less from beginning to end and *he did not hear anyone threaten to injure, oppress, intimidate or hurt anybody* (R. 267).

JACK T. BEVERSTEIN stated he was a special agent for FBI; was on duty on March 21, 1965, in Montgomery, observing a Klan parade (R. 268-269). His special duty was to record license numbers, some of which numbers he observed himself and some of which were called to him by the preceding witness, Agent Fearon (R. 269-270). U. S. Exhibit 5 was shown to witness and identified as his report of motor vehicle license numbers, dictated from his original notes (R. 270).

On cross examination, witness stated he heard no speakers on the occasion of the rally of March 21,

1965; he heard only of a parade permit for that date; he came to the field a few minutes after 12:00 noon; the parade left about 2:50 P. M.; he followed and observed the parade in Montgomery until it disbanded; the parade lasted about 25 minutes (R. 272-273). *While Beverstein was with the Klan group, he did not hear anyone singly or conspiring with others to threaten, injure, oppress or intimidate anybody* (R. 274).

NEIL P. SHANAHAN stated he was a special agent of FBI (R. 276-277).

Witness stated he had known a man named Tommy Rowe for about 1½ years. The acquaintance was an official one, inasmuch as Rowe was furnishing information to FBI, and Shanahan had, since September 1, 1964, been assigned to control his activities and receive the information. Rowe had been working with FBI since 1960 (R. 280), and Rowe gave information by personal contact, telephone conversations, and written information mailed in (R. 281). Rowe worked with FBI through March 25, 1965 (R. 282). On this date, in the morning, Shanahan was in communication with Rowe who had information for him, which information was almost immediately sent by teletype to Montgomery, Mobile and Selma (R. 282-283). U. S. Exhibit 9, consisting of 3 teletyped documents, was identified by witness (R. 283), the time sent being 9:27 A. M., on March 25, 1965 (R. 284).

Later that same day, Rowe called Shanahan again, and communication was established about 11:20 P. M. Shanahan met Rowe personally in the parking lot of West End Baptist Hospital in Birmingham, Alabama, and had a conversation with him. Rowe gave Shanahan a gun. The conversation lasted from about 12:30

A. M., to about 2:00 A. M., the morning of March 26, 1965 (R. 285).

On cross examination, Mr. Hanes directed his questions to witness to develop the exact association of Tommy Rowe with FBI. Rowe had reported to Agent Blake prior to September 1, 1964, when Rowe began reporting to witness. Rowe was not a special agent of FBI; he was not a special employee, nor was he a regular employee. Rowe was an informant (R. 287). He was paid on the basis of information delivered; his product was selling information. Witness stated Rowe was paid for services rendered; he always had something to sell (R. 288). Shanahan stated he had had other informants (R. 289). Shanahan presumed he had received false information; could not recall any specific instances; but did state he had received information he could not corroborate one way or the other (R. 290).

On the morning of March 25, Shanahan received word Rowe wanted to talk with him; Rowe stated to Shanahan he had been asked to go to Montgomery by Gene Thomas; this was shortly before 8:00 A. M. (R. 290-291). The delay of about 1 hour and 27 minutes from the time the information was received until the information about the car was placed on the teletype was explained by Shanahan to have been occasioned because he was at home (R. 291-292).

Rowe and Shanahan had a telephone conversation about 8:50 A. M., in Birmingham, then all was quiet until the approximately 11:20 P. M., telephone call. Shanahan stayed in Birmingham all day (R. 293). During this telephone conversation, Shanahan told Rowe he had heard a woman had been shot in Lowndes County, Alabama; Rowe had asked him about this (R. 295); Shanahan had heard this on the 11:00 P. M., news; it was possible Rowe had also heard this on the news (R.296).

Rowe gave Shanahan a gun which he kept until later that morning when he tagged it and gave it to the Assistant Agent in Charge (R. 299). The gun was examined by Shanahan; he smelled the muzzle; removed the cartridges (R. 299). No fingerprint examination was made since witness knew Rowe's prints were on the gun (R. 299-300). Witness did not know the serial number of the gun; did not know whether or not it had been fired; did not look at the gun in the light (R. 300).

Rowe told Shanahan about a shooting; they were together about 1½ hours; Rowe was not taken into custody; Shanahan did not go to headquarters but returned home (R. 300). The incident was reported to the Special Agent in Charge, Everett Ingram, at about 2:20 A. M., March 26.

Shanahan worked further on the investigation. Since September 1, 1964, Shanahan had paid Rowe an average of $275.00 to $290.00 a month (R. 305).

On redirect examination, Shanahan related the conversation he had with Rowe on the morning of March 25 (R. 307-309). Rowe told him Gene Thomas had called; told him to come to Bessemer; they were going to Montgomery. Rowe advised Thomas he had received Klan instructions as late as 10:00 P. M., the previous night they were not going to Montgomery. Rowe said he would have to check with his immediate superior; Robert called and told him to go to Montgomery with Gene Thomas. Shanahan thought it would be suspicious if Rowe did not go and later advised him to go. This line of questioning was objected

to, but objection was overruled on the theory this examination was merely the narration of the rest of a conversation probed into by the defense (R. 307).

After Rowe returned, he related his activities to Shanahan (R. 309-314). These concerned Gene Thomas, Wilkins, and Eaton.[3]

Mr. Hanes recross examined Shanahan as to these activities (R. 315-323). Further, on recross examination, Shanahan stated he, Rowe, Special Agents Alexander and Downey left Birmingham for the scene of the shooting about 9:30 A. M., March 26 (R. 323-325). Shanahan had picked Rowe up about 5:00 A. M., at the parking lot of GES store in West End, Birmingham, and taken him to FBI headquarters (R. 323).

[illegible]y proceeded to Selma; stopped on the outskirts [illegible] Agent Archibald Riley; transferred to his [illegible]icle; and retraced the route of the activity of the preceding night (R. 325). The group started from the Edmund Pettus (Alabama River) Bridge toward Selma; went to Silver Moon Cafe but no one was talked to there (R. 326). The visit was to identify the place; no one was asked if Rowe and the 3 defendants had been present the night before (R. 327). Leaving Silver Moon, the men went down a street next to the cafe where Gaston Super Market was pointed out by Rowe as the place where a U-turn was made to try to go past Brown's Chapel Church, but the street was blocked and the next street was taken (R. 328). Although the distance or time was clocked, Shanahan did not recall the figure (R. 323-329); he estimated from Pettus Bridge back to Pettus Bridge along the route traveled

(3) Inasmuch as a narration of what Rowe told Shanahan would be repetitive, since Rowe did testify (R. 391, *et seq.*), such narration will be omitted at this point.

took about 15 or 20 minutes. Leaving Pettus Bridge once more, the group headed east toward Montgomery; the distance was taken from there to the place of the shooting but Shanahan did not know who did this (R. 329); he estimated the distance to be about 25 miles. Shanahan and his companions went on into Montgomery (R. 330); he did not know if they went by St. Francis Motel; they went back to Birmingham (R. 331); it is about 25 miles from the shooting scene to St. Francis Motel, *i. e.*, 50 miles from Pettus Bridge to St. Francis (R. 332).

The car at the scene of the shooting was on the right side of the road proceeding east, elevated above the level of the road about 4 or 5 feet, and about 35 feet from the edge of the road (R. 332). The road at this point was upgrade and straight for about half a mile. On down the highway, Rowe pointed out the approximate place where the shell casings were thrown out the window (R. 333). At the next major intersection, probably Lowndesboro, a switch from Riley's vehicle was made to another car; the party returned to Birmingham (R. 334-339). Rowe did not point out the service station where gasoline was purchased the night before; or the point where Rowe's party missed the road and doubled back (R. 334). It is about 110 miles from Montgomery to Birmingham; it would be fairly close to the same mileage from Montgomery to Midfield, which is just to the west of and contiguous to Birmingham (R. 339).

Rowe is about 6 feet tall, even, and weighs about 215 or 220 pounds (R. 341). The Rowe group was in Thomas' car, a red and white Chevrolet (R. 341-342), with bucket seats and a console. Witness was of opinion 2 big people could ride on the back seat (R. 342).

Shanahan stated Rowe did not tell him when his group returned to Birmingham; did not take Shanahan by the filling station it stopped at; he and Rowe went by St. Francis Motel (R. 345).

R. W. GODWIN was from Montgomery and was an investigator for Alabama Department of Public Safety on March 25 (R. 348-349). On that date, Godwin received a call from FBI that a car, license number 1B-36964, carrying 6 Klan members was supposed to be headed to Montgomery, such license having been issued to Eugene Thomas, Bessemer (R. 349).

Godwin on cross examination stated the distance from Montgomery to Selma on U. S. 80 was about 50 miles; the distance from Montgomery to Birmingham 100 miles (R. 350-351).

EARL E. CAMPBELL lived in Montgomery and was radio dispatcher on March 25, which position entailed putting calls out to cars for assignment. A record of such calls was kept (R. 352); witness had such a record from 6:00 A. M., until 7:16 P. M., for the 25th (R. 353). U. S. Exhibit 20 was a copy of the foregoing record, with an entry at 10:38 A. M., concerning a Chevrolet automobile with a certain license number and a call was sent out (R. 352). Exhibit 20 was marked for identification (R. 354). Witness stated the entry for 10:38 A. M., concerned a 1965 Cheverolet, on cross examination (R. 354). Witness testified the license number was 1B-36964, on redirect examination (R. 355).

E. J. DIXON was a state investigator for Department of Public Safety; was engaged on his official duties on March 21 and 25 (R. 356-357). On the former day he observed the Klan demonstration in Montgomery, described previously. Aside from law enforcement personnel, he recognized only Robert Shelton. On the latter day, Dixon was at St. Jude's; at the Capitol; and at night on U. S. 80 (R. 357). He was called to U. S. 80 by Major Jones, the head of his division, to whom a shooting had been reported (R. 358).

A diagram was exhibited to witness, which, without being to scale, depicted U. S. 80 from Selma to Montgomery; and witness had made certain mileage measurements (R. 358-359). Using such drawing, Dixon pointed out Alabama River Bridge (Pettus) and Craig Field (R. 349); Tyler Crossroads; where the highway was two-lane and where it was four-lane (generally two-lane in Lowndes County) (R. 360). Witness also marked Dannelly Field and St. Jude's Church (R. 361). An inquiry was made about measurements to the scene of the investigation (R. 362). Distances were stated to be as follows: Selma to Dannelly Field—43.7 miles; Selma to Craig Field—4.2 miles; Selma to end of four lane—14.1 miles; Selma to scene of investigation—27.4 miles; Selma to four-lane leading into Montgomery—34.4 miles (R. 363). These were placed on the diagram (R. 364).

On the arrival of Dixon at the scene, he found the body of a white woman in an automobile about 50 feet off the south side of the highway (R. 364). Mr. Doar showed him U. S. Exhibit 12 for identification, which were 5 photographs taken by witness of the car and the body in the car (R. 365). They were admitted into evidence (R. 365). The automobile was on the south side of the highway facing east. The road was uphill toward Montgomery (R. 366). U. S. Exhibits 21 through 25, blow-ups of the 5 photographs of Exhibit 12, were admitted into evidence (R. 367); and witness described each with particular reference to the location of the car (R. 367-368).

Dixon merely observed the interior of the car that night; he did not examine it (R. 368). On that occasion, Dixon identified the body as Viola Luizzo from Michigan (R. 370).

Trooper Burgess gave him a piece of lead and he saw him get it from the right rear floorboard. This was turned over to Dr. Shoffeitt about 2:30 A. M., the morning of the 26th (R. 372).

Mr. Hanes cross examined. On March 21, Dixon was at Cramton Bowl about an hour to an hour and a half, having arrived around 1:00 P. M. (R. 373). He followed the motorcade to the Capitol. During this period, *Dixon did not hear anybody or any combination of people make any threats to hurt, intimidate, injure, oppress anybody* (R. 374).

On the night of the 25th, witness received a call at his home to proceed to U. S. 80. When he arrived Troopers Burgess and McGaha were present (R. 374), along with 2 or 3 other troopers. Dixon testified tracks led from the rear of the car back toward the highway for about 250 feet (R. 375). Witness was shown U. S. Exhibit 25 (R. 376). The car was identified; it had come to rest going uphill east toward Montgomery; the grade of the slope would be 30 degrees; the car was about 150 or 200 yards from the crest (R. 376-377). On reaching the crest, one would have a slight curve to the left (or right?) (R. 377).

Witness deposed he saw Burgess retrieve the piece of lead from the automobile (R. 377); but not from any exact spot. Burgess did turn at once and hand him the piece of lead, there being no time gap (R. 378).

Dixon later that night, or the next day, went back down the trail to where the car left the road (R. 378).

It went down the shoulder, then upgrade. At the point where the automobile left the road there was glass on the road, about 400 feet from the car. On that night, Dixon heard talk of other automobile tracks (R. 379), which were across the road (on the north side) about 150 feet from where the glass was found. They appeared to be tracks made by a car smaller than a standard Ford, Chevrolet or Plymouth (R. 380). The car which made these tracks had gone into the driveway and returned to the highway, but witness could not state whether it went toward Selma or Montgomery. The tracks were west of the point the principal car left the road (R. 381); a small car had turned around (R. 382).

Besides the troopers at the scene, there were 2 or 3 other cars parked on the road (R. 382). Dixon approached the scene from Montgomery; he arrived about 9:15 P. M.; he did not see anyone walking or running along the highway while coming to the scene. Traffic was light, which was normal (R. 383). There were some trooper cars deployed on the highway that night (R. 384).

Apparently Mr. Hanes then referred to the diagram on which Dixon had placed mileage measurements (R. 384, *et seq.*). The distances were measured from the center of Pettus Bridge (R. 384). Holiday Inn was placed about a mile east of the intersection of U. S. 31 and 80 (R. 384-385). It was about 4 to 5 miles from Dannelly Field to St. Francis Motel (R. 386), or about 50 miles from Pettus Bridge to St. Francis Motel (R. 386-387). Witness stated it was probably 95 miles from St. Francis Motel to Birmingham; and probably 90 miles from St. Francis Motel to a point midway between Birmingham and Bessemer on the Bessemer super highway (R. 387).

GARY THOMAS ROWE, JR., testified he was 32; lived in Birmingham in March, 1965; had lived there about 12 or 13 years (R. 391). Rowe had been contacted by FBI about furnishing information concerning racial activities in and around Birmingham in 1961. An agent came into his home about this, and, at the time, he was not a Klan member (R. 392). At the request of FBI, Rowe joined the Klan, Eastview 13 Chapter, Knights of the Ku Klux Klan located in Birmingham. He was a member of that chapter through March 25, 1965, although the name changed to United Klans of America, of which Robert Shelton, Tuscaloosa, Alabama, was the head (R. 393). Rowe attended Klan meetings; had known defendant Thomas about 5 years; defendant Eaton about 1 year; and defendant Wilkins about 2 years; they were members of United Knights of the Ku Klux Klan. All during the 5 years prior to March, 1965, Rowe had furnished information about the Klan to FBI on a regular basis (R. 394).

Rowe came to Montgomery on March 21 (R. 394) with 3 Klansmen, other than defendants, from the Birmingham area to participate in a parade and motorcade. Witness was shown U. S. Exhibits 13 through 18, so marked for identification (R. 395); recognized them as being taken on the 21st at or near Cramton Bowl in Montgomery. As to U. S. Exhibit 18, Rowe was able to single out, among others, defendants Eaton, Wilkins and Thomas (R. 396), whose faces he circled and marked (R. 397). The automobile of Gene Thomas was identified in U. S. Exhibits 13 through 15 and circled (R. 398-399).

Rowe was shown U. S. Exhibit 6—three photographs—and stated they were taken on March 21 at Cramton Bowl (R. 399-400). Witness was *not* shown

and did *not* identify U. S. Exhibit 10 for identification (R. 395-400); but these photographs were admitted into evidence over objection. Also, over objection, U. S. Exhibits 6, 13 through 18 were admitted (R. 400).

Rowe deposed he did not go to Montgomery on the 21st with any of the 3 defendants. He was instructed to go to Montgomery on the 25th by Gene Thomas, and Robert Thomas, such instructions being received at his home (R. 401-403). Robert Thomas was the superior of Rowe in United Klans of America; Rowe was Klan investigator for Eastview 13 unit and K. B. I.; a Klan investigator checked on membership applications and other matters detrimental to the Klan's way of thinking (R. 403). Robert Thomas was a Titan in United Klan; a Titan headed a province of 6 or 8 different units; Eastview 13 was in his province (R. 403-404). Gene Thomas was in Chapter 20 in Bessemer, also in the province of Robert Thomas. Eaton and Wilkins were in Chapter 20 (R. 404).

Over objection (R. 404), witness testified the superior of a Titan would be Grand Dragon for the State of Alabama, who was Robert Creel. Creel had been identified in one of the pictures taken in Montgomery on the 21st. Superior to Grand Dragon was Imperial Wizard, who was Robert Shelton of Tuscaloosa, not identified in any of the pictures, but he was present (R. 405).

The instructions came "from down the road", which meant Tuscaloosa, or Robert Shelton's Imperial office (R. 406). Rowe deposed he told Shanahan about his call from Gene Thomas and the change of plans; that Shanahan told him he would call Rowe back (R. 407). Shanahan did so and instructed Rowe to go along; Rowe prepared to do so; he went

to Bessemer to a place about 2 blocks from the Klan meeting hall; Gene Thomas, Wilkins and Eaton were in the car; Rowe parked his car at the house of Gene Thomas, a trip of several blocks (R. 408-409).

Gene Thomas was driving a 1962 Chevrolet, the car in the pictures at the rally of the 21st. The group proceeded to Prattville. They discussed the march they were going to observe (R. 409). The party arrived in Montgomery about 10:00 A. M.; rode around a few minutes; parked the car; walked toward the Capitol. They were within a block of the Capitol. Eaton, Gene Thomas, and Rowe were armed; the guns were left in the car. The four went to an American filling station where they stayed about 5 hours (R. 410). U. S. Exhibit 26 for identification, a photograph, was shown to Rowe, who recognized the scene and recalled the filling station the group remained at for 5 hours (R. 411). It was admitted into evidence. During the time at the filling station, the four stood around, talked, harassed the marchers, hollered at them, booed them, got in an argument with some of the colored spectators (R. 412). The crowd reached beyond the filling station about three quarters of a mile or a mile (R. 412-413).

A telephone booth was located on filling station property. Gene Thomas and Wilkins got in the booth. Over objection, Rowe testified he observed the wire was cut after they left the booth (R. 413). The record is silent as to the condition of the telephone wire immediately prior to the time Gene Thomas and Wilkins entered the booth.

At the conclusion of the parade and speeches, Rowe's group went to the car; Rowe and Eaton armed themselves; Gene Thomas placed his weapon in a compartment between the bucket seats of his car; they then proceeded to Jack's Beverages located near Maxwell Air Force Base (R. 414-415). On the way to Jack's, the four discussed going to Selma (R. 415). Gene Thomas said they were going to Selma because they had things to do; they were going to get them done; and they might even get some entertainment from Shelley Winters, a real pig. The party ate at Jack's, staying probably a little longer than an hour. They proceeded to Selma on U. S. 80 (R. 416). On the way a hitchhiker was observed by Eaton; Wilkins asked Gene Thomas to slow down to see if he was a marcher and, if so, to "give him a little fun and a surprise"; on further observation, Wilkins remarked the hitchhiker was too clean to be a marcher (R. 417).

Rowe saw a highway patrolman later when the latter flagged the car down about 6:18 P. M. (R. 417-418). This occurred on the four-lane highway next to Selma on U. S. 80 (R. 418), where the radar was. Gene Thomas was asked for and produced his driver's license; was informed he was barely in the maximum not to be ticketed for speeding; he was stopped for defective mufflers. A ticket was issued for improper mufflers, which Rowe saw (R. 419).

The trip was continued on into Selma where the first stop was Silver Moon Cafe, about 2 or 3 blocks from Pettus Bridge; beer was ordered (R. 420). Prior to this all four had 2 beers each at Jack's, but that was all during the day (R. 420-421). The group remained at Silver Moon about 30 or 45 minutes. They discussed going to a colored A. M. E. Church where Shelley Winters was to entertain the marchers. While there, Gene Thomas left the table and talked with a man (R. 421). Upon returning, he informed his cohorts the man was the one who was out on the Reeb killing (R. 422).

Gene Thomas left the table again and returned. The ensuing discussion was about going to the church. When the group started to depart, this otherwise unidentified person from the record came up and stated he had done his job and for them to do theirs (R. 423).

The four left Silver Moon, got into the car, drove toward the church, which was less than 12 blocks away (R. 423). Gene Thomas got the car on a street 1 block over from the church. There a colored couple was walking (R. 424); Gene Thomas and Wilkins remarked they were going to have some fun and "take them." Rowe saw an Army truck with soldiers sitting in it; the four passed these colored people and went on. Gene Thomas removed his gun from the compartment be- the seats prior to this and handed it to Wilkins, ing it after the colored people were passed (R.

Rowe and the 3 defendants prepared to leave Selma over the Pettus Bridge (R. 425-426); about 2 or 3 blocks from the bridge they were stopped by a red light; an automobile pulled up on the left with a white woman driving and a Negro sitting beside her; Gene Thomas said they should follow the car to see where they were going. Thomas said he thought they were going out to the woods on a dirt road and park. Thomas told those in the back to get down out of sight; that they were going to follow and take them (R. 426). Thomas remarked he believed they had some of the brass. Rowe stated Gene Thomas constantly remarked the two were going out on the highway and make love; that they were going to get them. The car was a light colored Oldsmobile with a Michigan license plate (R. 427). Wilkins and Rowe, in the back seat, were told to sit up by Gene Thomas after the latter started following the car (R. 428).

Gene Thomas drove fast—from 10 miles an hour up to 90 and 100 (R. 428). (In what transpired subsequently, Rowe testified there were constant comments, particularly by Gene Thomas, that they were going to take them tonight). As the Rowe car approached Craig, the Oldsmobile was in the left lane, veered to the right, then speeded down the highway. Gene Thomas followed at speeds of 80 to 90 miles an hour (R. 429).

Rowe saw a green Volkswagon type station wagon and a highway patrolman at the point they received their ticket. The next time Gene Thomas tried to go around, the Oldsmobile was on the two-lane (R. 430). Rowe saw a two-story building with automobiles and Negroes around it; Rowe wanted to go back to town and find somebody else; they were going to get caught; it was not worth it (R. 431).

In a swamp area, Gene Thomas started around the Oldsmobile, handing Wilkins his pistol (R. 432). This was a .38 caliber pistol. The rest got their guns out on orders from Gene Thomas. Wilkins stuck his arm out the window about at elbow length; the woman turned her head and kind of looked toward Rowe's car; Wilkins fired 2 fast shots into the glass of the Oldsmobile, into the front window. Eaton started firing; Rowe put his gun up near the side of Wilkins' head; Wilkins continued firing as Gene Thomas passed the Oldsmobile; Eaton continued firing even after the Oldsmobile had been completely passed (R. 433). A little further on, Wilkins threw his casings out and reloaded; then Eaton threw his casings out at the window on the right hand side of the highway. The four proceeded at an extremely high rate of speed to Montgomery (R. 434).

In Montgomery, the four went to St. Francis Motel and turned in the direction of Birmingham (R. 435). They stopped at a filling station between Montgomery and Birmingham about 6 to 8 miles north of the south end of the freeway to Birmingham on another road (R. 435-436). After getting gas, Gene Thomas made a U-turn and returned to get on the freeway to Birmingham. The four went to VFW club in Bessemer (R. 436). On the return trip, Gene Thomas stated they were going to VFW Club to see Bob; he would give them an alibi in case the white woman and Negro were dead (R. 437). The four went to the club; did not see Bob; they ordered 2 beers; Gene suggested going to Lorene's for an alibi; Lorene ran a cafe; the group went to the cafe; Gene Thomas went away for about minutes; on his return, he stated everything was care of (R. 438); she would alibi for them. The four had a beer; left, and went to Gene Thomas' house; there they disbanded (R. 439).

Over objection, Rowe was allowed to testify the purpose of the Klan was to maintain white supremacy by any means necessary (R. 442).

On cross examination, Rowe stated he joined the Klan in 1960 or 1961 (R. 452). There was a ritual during which he took an oath, part of which is in the record at p. 453. After taking this oath of which the above was a part, and which was marked Defendant's Exhibit 1 for identification, Rowe admitted he divulged and revealed secrets of the organization and the names of members of the organization (R. 454). The Klan oath was admitted into evidence (R. 455), Defendants' Exhibit 1.

Rowe denied he agitated and provoked the Klan into activity; nor did he urge them to do certain things (R. 458).

While Rowe denied he participated in the attack on the first Freedom Riders on Mother's Day in Birmingham at the bus station he admitted he was present (R. 458). He went with some Klan buddies. Rowe admitted there was quite a melee at the bus station for about 15 minutes. After this, Rowe, along with others, got into an affray with 6 Negroes at 7th Avenue and 18th Street, North. Rowe got his throat cut rather severely and was bleeding profusely (R. 462). Rowe went to the bus station voluntarily and nothing forced him to go to the scene of the affray (R. 464). Rowe went to University of Alabama when there was trouble on integration matters, probably in June, 1963 (R. 464). He was arrested in Tuscaloosa.

Rowe admitted he was at Sandy Ridge Country Club in Birmingham with Lt. Dave Orange and others (R. 467). This club had a reputation for entertaining racially mixed couples (R. 468). Rowe denied he told some friends Lt. Orange wanted them with guns to meet Rowe at Sandy Ridge Club on March 18, 1965, at night. Rowe denied that prior to entering the Club he said to men waiting outside, including these defendants, "When I fire the first shot, rush in and shoot hell out of the place" (R. 469). Witness stated he went to Montgomery on Sunday, the 21st, with Leroy Rutherford, Robert Thomas, and Jack Crawford (R. 470). The group met at the house of Robert Thomas about 9:00 A. M., and left shortly thereafter for Montgomery. This quartet went U. S. 31 South. He had his gun, but did not inquire as to the others and did not know if they had them or not (R. 472). On U. S. Exhibit 18, a photograph, Rowe identified himself and marked the exhibit (R. 475-476). They arrived at the gathering around 11:00 or 11:30 A. M. Rowe did not recall any speech on that occasion by Robert Shel-

ton or Creel; he was not there full time (R. 477). Rowe testified he heard Crawford and Rutherford make some threats, but not publicly in a speech (R. 478). Rowe participated in the motorcade, which lasted about 20 or 30 minutes, then disbanded on the Selma road (R. 478). These four proceeded on toward Selma; they saw some marchers (R. 479).

Witness deposed he went to Montgomery on the 25th with the 3 defendants in Gene Thomas' automobile (R. 481). This was a 1962 Chevrolet, red and creamish white in color. They possibly took Route 150 from Bessemer to the freeway for Montgomery, arriving about 10:00 or 10:30 A. M. The car was parked in a regular paying parking lot. He left his gun in car (R. 485); he asked Gene Thomas to put it ...e; he was not sure about what he did with the ...ister (R. 486). All in the group left their guns; they went to an American filling station at Hull and Dexter about a block from the Capitol. There was a crowd at the filling station (R. 487); later a crowd in the street; very definitely curiosity seekers and mere spectators (R. 488).

They left the station about 3:00 P. M. (R. 489); went to the parking lot; got into the car; Rowe got his gun; they left the parking lot with Gene Thomas driving (R. 490). Eaton was sitting in front by Gene Thomas (R. 490-491); Rowe sat behind Gene Thomas; Wilkins sat to the right of Rowe. These were the positions maintained during the entire trip. They drove to Jack's, which is several miles from the parking lot (R. 491), arriving around 4:00 P. M., the trip taking about 20 or 25 minutes. They parked and went inside; they ate; they each drank 2 beers (R. 492).

Rowe and his helpmates left Jack's about 5:00 P. M.; they resumed their usual seating positions;

started to Selma (R. 494) on U. S. 80. A state trooper stopped the car at a crossroads nearer Selma than Montgomery; he flagged them down with a light (R. 495). Gene Thomas was cited for improper mufflers, *i. e.*, a warning ticket (R. 498). They proceeded to Selma (R. 498) and first stop was Silver Moon Cafe, which was reached in the vicinity of 6:00 P. M., perhaps later. The car was parked and all went inside. Witness stated the time was "closer to seven" (R. 499). Rowe and Thomas had a beer; Wilkins probably milk and Eaton probably a soft drink; nothing to eat. Their stay at Silver Moon was approximately 35 or 40 minutes; maybe longer (R. 500). Resuming their usual car positions, the group started toward the colored church (R. 500-501). Gene Thomas apparently missed the street as he made a U-turn and doubled back toward Silver Moon, which was in the same proximity (R. 501). Thomas then went on a dirt street one block over from the church, and returned to a main thorofare leading to the steel bridge (Pettus) (R. 502).

The other car was seen about the 2nd or 3rd traffic light from the bridge toward Selma (R. 502). Traveling from Silver Moon to this traffic light consumed in time about 25 minutes, maybe not that long. The car in which Rowe was riding proceeded out the highway; Rowe had his gun. Rowe's car caught up to the other car by going 10 to 15 miles an hour fluctuating to over 100 miles an hour (R. 503). When passing the other car the speed was about 60 or 65 (R. 504). From the traffic light in Selma to the place of shooting was about 25 miles and took about 25 or 30 minutes to reach, maybe not that long. When Wilkins shot, Rowe testified he placed his arm beside that of Wilkins; but did not knock Wilkins' arm to keep him from firing nor tell him not to fire (R. 505). Rowe did not tell Eaton or anybody not to fire (R. 506).

After the shooting, Wilkins threw his cartridges out the window, then Eaton did likewise almost simultaneously (R. 506-507). At the time the speed of the car was 90 or better (R. 506), and the road was two-lane. The car was in the right hand lane (R. 507), fairly close to the edge of the pavement (R. 508).

Rowe next recognized St. Francis Motel, at which point a left turn was made. It was 15 or 20 miles from point of shooting to St. Francis (R. 508), and time-wise 20 minutes. The left turn at St. Francis put the car on the road to Birmingham (R. 509). They stopped at a filling station, bought gas, and all went to the rest room in less than 6 minutes. This service station was about 10 or 15 miles from St. Francis (R. 510), and about 15 minutes to reach. It was some 6 or 8 beyond the southern end of the Birmingham freeway and Rowe and the three doubled back to connect with the freeway (R. 511).

A county road was taken at Alabaster to Bessemer (R. 512), where VFW Club was visited on the outskirts of Bessemer between 9:00 and 10:00 P. M. (R. 513). Each of the four consumed right at 1½ beers (R. 514). They remained at VFW approximately 10 or 15 minutes, and then journeyed to Lorene's Cafe in Bessemer, about a mile or 2 from VFW. It required just a short time to reach Lorene's (R. 515), where the four stopped for 20 or 25 minutes. Rowe had a beer at Lorene's and maybe 2; each of the four ordered the same (R. 516).

Leaving Lorene's the quartet returned to in front of the house of Gene Thomas, probably a mile or so from Lorene's, which distance required only a few minutes to negotiate, maybe 6 (R. 517). On arrival at Thomas' house, all alighted from the car; this was

about 11:00 P. M. After managing to get his car started after some difficulty, Rowe drove into Central Park (R. 518). Shanahan met Rowe at West End Baptist parking lot about an hour later (R. 519). After a time Rowe got into Shanahan's station wagon and they talked for 2 or 3 hours (R. 520-521). Rowe left Shanahan about 2:00 or 3:00 A. M., and went home (R. 521).

Shanahan and Rowe next met about 6:00 A. M., between FBI office and Rowe's home (R. 521), where Rowe got into Shanahan's FBI vehicle and was driven to FBI office in Birmingham (R. 522). Agents Shanahan, Downey and Alexander, with Rowe, left about 9:00 or 9:30 A. M., to sojourn to Selma, taking U. S. 31 to Montgomery, thence U. S. 80 to Selma. Rowe did not point out the service station where he and his Klan brothers stopped the night previous for gas (R. 523), but returning he did point out St. Francis Motel. However, no stops were made. They slowed down, but did not stop, at that point on U. S. 80 where there was considerable activity and there was a car off the road (R. 524).

In Selma Silver Moon was given a passing glance (R. 525) about 11:00 A. M. (R. 531). The church was looked at (R. 532) and this group proceeded to Pettus Bridge and out U. S. 80, taking the same route back (R. 533), slowing down once more at the scene of the activity on U. S. 80. Birmingham was reached about 3:00 or 4:00 P. M. (R. 534) where Rowe was incarcerated in county jail. Bond was made for him that same night (R. 535).

On redirect examination, Rowe stated at the Klan rally in Montgomery on March 21, Rowe, together with Crawford and Rutherford, harrassed and booed

state officers, took pictures of FBI agents, and tried to get a license tag number of a state car (R. 544).

Rowe related that at the time of the shooting Gene Thomas asked Eaton what he was shooting. Eaton replied his .22 and justified this by stating he was using long rifle bullets which had to have their heads cut off so they would fit the chamber, making them more deadly (R. 545).

After Rowe stated he had been sent by FBI to infiltrate the Klan, Mr. Doar then questioned Rowe about the Klan oath and had Rowe read 2 paragraphs thereof (R. 546). Mr. Hanes had Rowe read other sections of the oath of allegiance (R. 547-549).

PAUL E. SHOFFEITT stated he was a toxicologist and assistant director of the State Department of Toxicology and Criminal Investigation stationed at Auburn (R. 551). Witness saw the body at White's Chapel Funeral Home in Montgomery around midnight on March 25 (R. 552). That body was identified to him as Viola Gregg Luizzo, and he performed an autopsy. This post-mortem examination revealed the cause of death was "hemorrhage and brain damage as result of a bullet wound which penetrated the left side of the head" (R. 553). A bullet was recovered and the Doctor received another piece of lead from a state investigator (R. 554). These were delivered to Roy Eveland, an FBI agent at Opelika (R. 555), on the 27th (R. 556). After cross, redirect and recross examination, witness was excused.(4)

(4) Since many of the points elicited from this witness and several others which follow are otherwise developed, such points will be deferred until that more appropriate time to avoid repetition.

ROY EVELAND stated he was special agent of FBI (R. 564-565). Dr. Shoffeitt on March 27, delivered to him 2 lead bullets which were in small brown envelopes. After Eveland saw the bullets they were resealed in different envelopes by the Doctor and identfied (R. 565-566). Eveland delivered these envelopes to Marion Williams that same day. The 2 envelopes were marked for identification as U. S. Exhibit 28 and 29 (R. 566).

OUIDA LARSON lived in Selma and worked at Silver Moon Cafe (R. 571). She worked there on March 25 from 2 until 12. On that day 4 persons came into Silver Moon between 7:00 and 8:30 P. M. (R. 572). Witness identified defendants Thomas, Wilkins and Eaton as 3 of those 4 persons and said she did not see the fourth in the courtroom (R. 573). The four sat in a booth and she served 2 of them beer. Witness could not recall any particular person from among the many others who were present at that time, nor did she remember how long they stayed (R. 574).

ARCHIBALD L. RILEY was a special agent for FBI (R. 577). He was stationed at Selma on March 26, 1965. He met Rowe and some Birmingham agents in Selma (R. 578). Rowe directed Riley as to the route he had taken the night before, from Pettus Bridge through Selma and back to U. S. 80 to the scene (R. 579-581).

On Monday, the 29th, Riley was searching the shoulders of the road on the Montgomery side from the scene of the shooting (R. 581). With some others, Riley found 5 .38 caliber shells, which had been fired. These casings were identified on the inside by a marking, and handed to witness who mailed them to FBI laboratory, Washington (R. 583).

On cross examined by Mr. Hanes, Riley stated he [illegible] Rowe and the 3 agents with him when the [illegible] Rowe and his 3 companions was being re[illegible] left the car past the scene towards Mont[illegible] returning to Selma to his office (R. 586). The [illegible] Rowe were Shanahan, Gettings and Leahy [illegible]

[illegible] started looking for empty shells on the 26th, [illegible] about 1:30 P. M. (R. 588). Riley and his [illegible] started the search about 1 mile from the [illegible] toward Montgomery and worked toward Mont[illegible] R. 588-589). The shells were found on Mon[illegible] 588). They were between the edge of the [illegible] and the ditch; they were right on the shoul[illegible] was about 2 feet off the road, another one [illegible] feet off, another one about 3½, the farthest [illegible] about 9 feet off. They were scattered along[illegible] highway on the shoulder at no particular [illegible] parallel thereto (R. 589).

[illegible] Hardeman on redirect elicited the information [illegible] were found .55 of a mile from the scene [illegible]

[illegible] *JEROME MOTON* lived in Atlanta, Geor[illegible] was 20 years of age. During the Selma-Mont[illegible] march he was in transportation from March [illegible] the 25th (R. 594); he lived in Selma then (R. [illegible] Moton met Viola Luizzo March 18; he had her [illegible] that time until she was killed (R. 594). Moton saw Mrs. Luizzo Wednesday, March 23, when he took [illegible] the march, and on Thursday evening the 24th [illegible] R. 595). She drove the car from St. Jude [illegible] R. 596).

Moton and Mrs. Luizzo left for Montgomery (R. [illegible] Mrs. Luizzo was driving; Moton was to the

right in front (R. 597). On U. S. 80, someone passed the car and shot; he was tampering with the radio; the car ran off the road; Moton stopped it; turned switch and lights off. A car came over the hill, stopped, shot a light at the Luizzo car (R. 598). He passed out in the car (R. 598-599). His next recollection was blowing the horn at some cars. Moton departed the car and ran toward Montgomery; he was picked up and returned to Selma. He went to Brown's Chapel Church (R. 599).

On cross examination, in addition to the foregoing, Moton stated he did not know whether Mrs. Luizzo was working or not (R. 601), but she came to the transportation office (R. 602). On the trip from St. Jude to Selma, another car tried to run the Luizzo one off the road (R. 605); and bumped the Luizzo car 2 or 3 times (R. 606). Mrs. Luizzo started back to Montgomery and was driving 70 to 75 miles an hour (R. 608). Moton did not hear any shots fired; he heard glass shattering; witness did not know where shots came from (R. 608-609). They had left Selma at 7:34 P. M. so this was close to 8:00 P. M. (R. 609-610, 621).

When a car shined lights on the Luizzo car, Moton got down; he did not touch Mrs. Luizzo (R. 609; 622); the car went back toward Selma (R. 609). When the car shined its lights Leroy stayed in the car about 5 minutes. He tried to flag a truck (R. 610). While he was in the road, a little red Sprite headed toward Montgomery (R. 611) came by at about 70 miles an hour and tried to run him down (R. 610). Leroy was in the ditch for a while; then got on the front seat and passed out for about 30 minutes (R. 611). Leroy ran and walked down the highway toward Montgomery for about 3½ miles. He did not see any state troopers or other cars (R. 612).

Leroy got into the rear of a truck he flagged and went to Brown's Chapel Church (R. 614). He saw Lt. Nichols but did not tell him of the shooting (R. 615-616). At First Baptist Church he talked with Hosea Williams, an SCLC official (R. 616). Lt. Nichols took Leroy into custody there and carried him to Selma Police Station (R. 616-617). Moton denied twice that he stated to those present the car that came alongside and shot was a black 1955 Ford, which went on up the hill, turned around, came back, shined its lights on the car, and went back to Selma (R. 618). On cross examination, Leroy said he stopped the car by using the brake pedal. Leroy was 6 feet, 4 inches tall (R. 622).

JESSE McGAHA lived at Metairie, Louisiana. On [illegible] 25, he was a state trooper (R. 623) on duty on [illegible] 80 east from Selma on radar detail; his partner was Trooper Hagood. The radar detail was set up at Tyler Crossroads, 11 miles east of Selma (R. 624), which McGaha marked on the drawing of U. S. 80. His unit was stopping violators. McGaha was shown U. S. Exhibit 31 for identification, a warning ticket (R. 625). Hagood flagged a 1962 Chevrolet and wrote the warning ticket and the driver asked if "the niggers been giving you boys any trouble" (R. 627). The ticket was admitted into evidence. Witness was shown U. S. Exhibit 32, which he recognized as issued to a Volkswagen bus on the same detail about 7:50 P. M. Over objection, this was admitted (R. 628).

Additional testimony on cross examination set the time at 6:20 P. M., for the muffler warning (R. 629). The troopers were working the westbound lane of the four-lane (R. 630). Traffic was on the medium to heavy side. Witness was sure other troopers were working U. S. 80 (R. 631). McGaha did not observe,

arrest, or hear of any arrest on that night of cars doing 100 miles an hour (R. 632).

THOMAS M. SHAUGHNESSY was an agent for FBI (R. 635); and his testimony concerned W. O. Eaton, the appeal being moot as to him. However, it may be noted Eaton was arrested at his residence; a search was conducted; a hand gun was found under the mattress in the bedroom on the first floor. This gun was marked U. S. Exhibit 33 for identification, which witness said was the one he obtained at the Eaton residence (R. 637). Eaton stated after his arrest he arrived home at 10:30 P. M. (R. 636) on March 25. Shaughnessy also identified a small box with the gun as containing 6 .22 caliber bullets with which the gun was loaded (R. 647). This was part of U. S. Exhibit 33, which was admitted (R. 646).

EDWARD M. LEAHY was an FBI agent during March, 1965 (R. 653), stationed in Birmingham (R. 654). On March 26, Thomas was arrested by other agents in Lorene's Cafe in Bessemer (R. 655). U. S. Exhibit 34 for identification was 6 photographs of Thomas' car outside of Lorene's and it was admitted (R. 656). On the passenger side of Thomas' car there was a .22 caliber bullet sitting on the ledge where the window came out of the door (R. 657). Agent Connaughton directed attention to the bullet and, over objection, witness was allowed to state Thomas turned ashen or gray (R. 658-659).

Leahy with Agents Connaughton, Byron and Maynor went to the home of Thomas with a search warrant, which was U. S. Exhibit 35, for the residence and automobile of Thomas (R. 659-661). This was admitted into evidence (R. 661). Thomas' home was searched; some .38 caliber ammunition was found;

these were U. S. Exhibits 36, 37 and 38 for identification (R. 662-663). A Smith & Wesson .38 caliber revolver (R. 667), serial C418827 (R. 670), was found in the car of Mrs. Flossie Thomas and marked for identification U. S. Exhibit 39 (R. 666-667). Mrs. Thomas executed a consent form, U. S. Exhibit 40 for identification (R. 678-679), for Agent Byron. Exhibits 39 and 40 were admitted without objection (R. 679).

The testimony of *AGENT CHARLES DONALD BYRON* (R. 677-685) is omitted. Byron did read an inventory of things taken from the house of Thomas pursuant to the search warrant including one Newport model CN double barrel sawed off shotgun, serial number T70594 (R. 683-684).

JOHN F. CONNAUGHTON was an agent of FBI on duty in Birmingham on March 26 (R. 707). He participated in the search of Thomas' house and seized pursuant to warrant a sawed off shotgun, U. S. Exhibit 41 for identification (R. 707), admitted into evidence over objection (R. 708). The basis for such a ruling, as stated in chambers, was that these defendants belonged to an organization dedicated to the preservation of white supremacy, regardless of the means, ballots or bullets (R. 694-695). This would go to intent as to what they were doing here, yonder, on their trip (R. 696; 708-709).

RALPH BUTLER was an agent of FBI, stationed in Birmingham on duty March 26. Butler arrested Thomas at Lorene's (R. 713). The .22 caliber shell was marked U. S. Exhibit 42 for identification and was described as having the nose of lead cut or shaven off with a hollow point in it; it was a misfire (R. 714). It was admitted into evidence (R. 715).

LAWRENCE G. GETTINGS was an agent of FBI, stationed in Birmingham and on duty on March 26. Gettings arrested Thomas (R. 719). Thomas made a statement (R. 720-725) which affirmed the activities of March 25 as previously testified to except: (1) Thomas had no knowledge of the slaying of Mrs. Luizzo; (2) They only watched the people come in, and watched the speeches in Montgomery; (3) About 4:30 P. M., they left in his automobile for Selma; (4) He went right back to Birmingham via Selma and got back there at 9:30 P. M., and went to Lorene's Cafe in Bessemer; (5) He had no knowledge of the murder of Mrs. Luizzo from Detroit and he did not murder her; (6) He had a permit for a .38 caliber Smith and Wesson. The citation for a defective muffler given Thomas was admitted as U. S. Exhibit 43 (R. 723); the pistol permit as U. S. Exhibit 44 (R. 725).

By *RILEY* and *SHANAHAN*, U. S. Exhibits 45 (R. 512, *et seq.*), the 5 casings, and 46, the Rowe gun, were admitted (R. 741, 744). Shanahan, in response to recross examination, stated Rowe's gun was sent to FBI only to determine whether it had been fired (R. 744).

The following exhibits were received without objection: 5, 7, 8, 9, 11 and 20. The following were admitted over objection by defense counsel: 36, 37 and 38. U. S. Exhibit 19 was not admitted (R. 754-757).

MARION E. WILLIAMS was an agent of FBI (R. 757-758), assigned to FBI Laboratory, Washington. On examination of the automobile removed from U. S. 80 (R. 763) he found 2 indentations on the driver's side of the car, pointed out on U. S. Exhibit 23 (R. 764). Williams found 3 unusual holes. On U. S. Exhibit 22 he noted 1 hole in the window in the driver's door and 2 holes in the windshield slightly to the

driver's side of center (R. 764-765). Witness found a fragment of a bullet under the back seat on the passenger side (R. 765). Inspection of the rear view mirror revealed an indentation in which there were smears of lead (R. 766). He had no way of determining when the door indentations were made; they had not rusted but appeared to be rather new (R. 767). Test firings was made on door panels of a 1963 Oldsmobile, which indicated .38 caliber bullets would penetrate and .22 caliber bullets would not (R. 768).

U. S. Exhibit 47 for identification was a chart with line drawings of a 1963 Oldsmobile, not to scale (R. 769). One indentation was made by a projectile which hit the car at a slightly forward angle, nearly level. The other was caused by a missile which hit the car on an angle slightly to the rear, nearly level, perhaps slightly upward (R. 770). Witness indicated the hole in the door glass and stated the bullet had coursed across the car and come to rest in the rain gutter on the opposite side (R. 770). He said one windshield hole was slightly lower than the other and this bullet struck the window on the passenger side and left a lead smudge without breaking it, the bullet being fired at an angle of something like 45 or 50 degrees with respect to the long axis of the car. The bullet through the upper hole struck the rear view mirror, being fired at an angle of about 30 degrees (R. 771).

U. S. Exhibit 48 was 2 pieces of metal from door of the 1963 Oldsmobile used in test firing with a .22 caliber weapon; U. S. Exhibit 59 was 2 pieces of metal from the Luizzo car. They were admitted without objection (R. 773-774). U. S. Exhibit 28 was a mutilated .38 caliber lead bullet (R. 776). U. S. Exhibit 29 was a mutilated .38 caliber lead bullet, marked by

him as Q 16. These were the Eveland exhibits (R. 778-779). U. S. Exhibit 39 (R. 679) was the Thomas Smith and Wesson (R. 779). Test specimens were fired from the gun and these test cartridge cases and bullets were the ones used in his examinations (R. 780). U. S. Exhibit 46 (R. 744) was the Rowe Smith and Wesson (R. 780). U. S. Exhibit 33 (R. 645) was the Eaton .22 caliber hand gun (R. 781). U. S. Exhibit 50 was the fragment of a .38 caliber bullet found under the rear seat of the car (R. 782). U. S. Exhibit 51 was the badly mutilated .38 caliber bullet recovered from beneath the rain gutter (R. 782-783). The bullets were admitted without objection (R. 777-779; 783). Witness stated his opinion to be that the bullets in Exhibits 28, 29 and 50 were fired from Exhibit 39. Exhibit 51 was not identified with Exhibit 39 because of its mutilated condition (R. 784-785). This was illustrated by the comparison photographs of U. S. Exhibit 55 (R. 794). Exhibit 45, the 5 casings on U. S. 80, was shown to witness and he stated he had come to the conclusion they had been fired from the Thomas S. & W., and not the Rowe S. & W. (R. 787). This was demonstrated technically by U. S. Exhibit 52, a casing from a .38 caliber special cartridge fired in Exhibit 46; U. S. Exhibit 53, a photographic exhibit prepared from photomicrographs of one of the casings; and U. S. Exhibit 54, a photographic exhibit of the other four casings (R. 787-793). Witness said: "These photographs (of the bullets and casings) in and of themselves do not prove the identification; the identification is based upon the microscopic study and the experience of the Examiner." (R. 795) Williams further stated his conclusion the .22 caliber cartridge of Exhibit 42, taken from Thomas' car, was not fired from the .22 caliber gun of Eaton, Exhibit 33 (R. 798).

The 2 bullets received from Eveland (one was the Luizzo bullet) had a foreign substance in the nose which appeared to be glass (R. 798). An additional point developed on cross examination was that witness could not say the marks on the door were fired by a .22 caliber weapon to the exclusion of all others (R. 804). Further, it is possible one being 6 feet, 4 or 5 inches tall sitting in the passenger seat could have been hit by one of these 2 bullets, the lower one through the windshield or the one through the door window (R. 805-810). Williams stated as a result of his examination of the Luizzo car he found the front seat or the front bloody; the driver's side; driver's side door; floor mat on the driver's side; floor mat in rear on driver's side were heavily soaked with blood as was the front seat cushion and the front portion of the floor and on the passenger's seat. Blood was pretty general in the area of the brake pedal and the accelerator (R. 812). Also, it is possible, if the driver's foot were normally on the accelerator, that a passenger who reached over to depress the brake pedal would have to touch the body of the driver (R. 812-813).

Williams did not report whether or not the Rowe gun had been fired.

RICHARD W. FLACK was an agent for FBI assigned to the laboratory in Washington (R. 818). Some bullets were examined for glass by him. Exhibits 28 and 50 had traces of laminated glass, used in windshields; Exhibits 29 and 51 had traces of tempered glass, used in side windows of cars (R. 820-821).

The United States rested its case (R. 821) and defense counsel Hanes, in effect, moved for a judgment of acquittal, which motion was denied (R. 823).

After the case for the defense and rebuttal, Mr Doar opened the summation for the United States (R 911-918); Mr. Hanes argued for the defense (R. 919-933); Mr. Hardeman concluded (R. 934-942).

Judge Frank M. Johnson, Jr., charged the jury (R 75-101), limiting the consideration of the jury to Item 4 in the indictment concerning the protest march (R 82-83). Jurors were cautioned the sawed *off shotgun* was not admitted for proving Thomas committed another crime, but solely on the question of intent (R. 94). Mr. Hanes requested, and the Court gave, a charge on the failure of defendants to testify (R. 96).

On December 3, 1965, the jury reported a hopeless deadlock (R. 114). The Court further charged the jury (R. 114-116), to which Mr. Hanes objected (R. 117) Of especial import were the following excerpts, among others:

"So you haven't commenced to deliberate the case long enough to reach the conclusion that you are hopelessly deadlocked . . ." (R. 115)

"This trial has been long, and the trial has been expensive. Your failure to agree upon a verdict will necessitate another trial equally as expensive; that is expensive as far as the Government is concerned, it is *expensive as far as the defendant is concerned.*" (R. 115)

"It is therefore very desirable that you jurors should agree upon a verdict in this case." (R. 115)

Defendants were found guilty by jury verdict on December 3, 1965 (CLW, R. 51; ET, R. 52). Each was sentenced to 10 years imprisonment (CLW, R. 56; ET, R. 57).

Hence this appeal.

SPECIFICATIONS OF ERROR

1. The court erred in denying appellants' motion to dismiss the indictment (R. 16-17).

2. The court erred in denying appellants' motion for a bill of particulars (R. 16-17).

3. The court erred in admitting over objection the following testimony and evidence:

A. U. S. Exhibits 1 and 2 (R. 194-195).
B. U. S. Exhibits 3 and 4 (R. 204; 208-9).
C. U. S. Exhibits 6, 13 through 18 (R. 400).
D. U. S. Exhibit 10 (R. 400).
E. Testimony as to Klan organization (R. 404, *et seq.*).
F. Testimony as to telephone booth (R. 413).
G. Testimony as to Klan activities and purpose (R. 440-442).
H. U. S. Exhibits 36, 37, 38 and 41 (R. 756; 708).

4. The court erred in denying appellants' motion for judgment of acquittal (R. 823).

5. The court erred in allowing the United States to close the argument to the jury, even without objection (R. 934-942).

6. The court erred in charging the jury, even at the request of defendants, concerning their failure to testify (R. 96-97).

7. The court erred in its supplemental charge in that it was coercive and did define incorrectly a §241 conspiracy (R. 114-117).

8. The court erred in entering a judgment of guilty against appellants in that said judgment was contrary to the weight of the evidence and was not supported by substantial evidence (CLW, R. 72; ET, R. 73).

ARGUMENT

POINT I

An indictment under 18 USC Sec. 241(5) is fatally defective where the right alleged to have been conspired against is not one secured by the Constitution or laws of the United States.

At the outset, it is emphasized this case was su posedly tried on the theory defendants conspire against the right of *unnamed citizens* to participa in a protest march according to a plan ordered by th lower court, paragraph 4 of the indictment (R. 3 since the court in its charge eliminated from the co sideration of the jury the remaining paragraphs (I 82-83). Thus, if paragraph 4 did not embrace a pr tected right, the entire case falls and defendants motion to dismiss this paragraph should have bee granted, as well as the motion for judgment of ac quittal.

As to paragraph 4, neither *U. S. v. Guest*, –US–, no *Price v. U. S.*, –US–, decided March 28, 1966, are con trolling as authority the indictment was not subjec to dismissal. *Guest* involved, insofar as Amendmen XIV rights were concerned, the equal protectio clause, and the Court stated rights under this claus arose only where there had been involvement of th state or of one acting under the color of its authority The Court found such involvement by the state suffi

---

(5) "If two or more persons conspire to injure, oppress threaten, or intimidate any citizen in the free exercise o enjoyment of any right or privilege secured to him by th Constitution or laws of the United States, or because o his having so exercised the same; . . .

"They shall be fined not more than $5,000 or imprisone not more than ten years, or both."

cient to prevent dismissal of that branch of the indictment in the statement of the means of accomplishing the conspiracy. Our case did not involve the equal protection clause, especially since there was no allegation Negroes were being denied any right or privilege.

The indictment in *Price* charged the defendants "conspired together . . . to injure, oppress, threaten and intimidate" 3 named individuals "in the free exercise and enjoyment of the right and privilege secured to them by the Fourteenth Amendment to the Constitution of the United States not to be deprived of life or liberty without due process of law by persons acting under color of the laws of Mississippi". In the purpose part of the indictment, the involvement of the ..te of Mississippi in the person of Deputy Sheriff ..e was alleged. The Court stated "that this lan-..uage (of §241) includes rights or privileges protected ..y the Fourteenth Amendment; that whatever the ultimate coverage of the section may be, it extends to conspiracies otherwise within the scope of the section, *participated in by officials alone or in collaboration with private persons;* and that the indictment...properly charges such a conspiracy in violation of §241 . . ." (Emphasis supplied). The present indictment was totally devoid of allegations showing involvement by the State of Alabama, although as noted in the separate opinions of Clark and Brennan, JJ., in *Guest*, Congress possibly could legislate constitutionally against a private conspiracy to violate Amendment XIV rights. It had not done so!

The question must then be reached: What right or privilege secured by the Constitution or laws of the United States was involved? The right to march and protest, as stated in paragraph 4, *if secured to the unnamed citizens solely by order of the court of March 17, 1965*, was patently not one "secured to him by the Constitution or laws of the United States". Contempt proceedings suggest themselves as the proper method to punish interference with rights or privileges granted by a court order. Amendment I[6], as subsumed into Amendment XIV by its due process clause, is urged as the sole basis of the right alleged to have been involved. Freedom of speech and of the press have been denominated as fundamental personal rights and liberty, *Schneider v. Irvington*, 308 US 147, as would be the right to assemble peaceably and the right to petition the government, since they lie at the foundation of free government by free men. See *U. S. v. Cruikshank*, 92 US 542,552. Hence, the right involved was a right vindicated against state action and was not one "secured by the Constitution and laws of the United States". Compare *Powe, et al. v. U. S.*, 109 F2d 147 (CCA5). The indictment as to paragraph 4 was fatally defective under the *Price* doctrine since no state involvement was alleged; and it was, of course, not cured by the verdict. *Sutton v. U. S.*, 157 F2d 661 (CA5). The motion to dismiss as to paragraph 4 should have been granted, and in the posture of this case, the defendants should be freed, since it is obvious the United States cannot return an indictment on the proof adduced which can allege any state involvement.

(6) "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances."

POINT II

Where the means alleged in an indictment for conspiracy enlarge the statutory definition of conspiracy in Sec. 241 the indictment is fatally defective.

The indictment in *Price* alleged *specific acts* which were part of the plan and purpose of the conspiracy, as did the *Guest* indictment, *e.g.*, "1. By shooting Negroes; 2. By beating Negroes", etc. Further, the means in *Price* clearly showed state action. This indictment did not allege any specific acts by persons acting under the laws of Alabama, or even acts by private individuals. Instead it merely enlarged generally the scope of the alleged right to participate in the protest march by extending "participation" to those "who were lending or had lent their support" (R. 3). The court in its charge also extended the alleged right to persons "who were lending or had lent their support to a demonstration march". (R. 83; 97) It is difficult to see under any concept of §241 wherein any federal right, Amendment XIV or otherwise, was involved. "Lending support" is not the exercise of freedom to peaceably assemble or petition for redress of grievances. There can be no federal role involved in a person's contributing money to a cause, lending his automobile, or doing any of the other things pertaining to a protest march other than actual and direct participation. To elevate this to a constitutional right, and further to punish by federal law denials of the alleged right by private individuals only, inevitably would affect adversely "the wise adjustment between state responsibility and national control . . .". See *U. S. v. Williams*, 341 US 70, 73. The indictment was due to be dismissed because of this addition to the substance of §241, as approved by the court in its charge to the jury. *Viereck v. U. S.*, 318 US 236.

POINT III

Failure to exercise a sound judicial discretion in denying a motion for a bill of particulars requires a reversal of a conviction.

Defendants moved for a bill of particulars[7] (R. 10-15) to ascertain the names and addresses of the persons conspired against, together with the dates and places where the acts occurred (R. 12-13). The motion was denied (R. 17) after colloquy among court and counsel (R. 37-47). It is settled law "the granting or denial of a bill of particulars rests within the sound discretion of the trial court, and in the absence of abuse or prejudice, its ruling will not be disturbed on appeal." *Johnson v. U. S.*, 207 F2d 314, 321 (CA5). See also *Robertson v. U. S.*, 263 F2d 872 (CA5) and *Reynolds v. U. S.*, 225 F2d 123 (CA5).

A reading of the record of the trial below shows primary reliance was had by the United States on the murder of Viola Luizzo, even though Mr. Doar and the court emphasized the conspiracy alleged under §241 was not directed against a particular person but a class of persons (R. 40-41; 140-141). That this was to be the primary reliance was evident before trial because United States attorneys, out of the presence of counsel for defense, mentioned certain evidence concerning Viola Luizzo to the court (R. 139); and because the court *immediately prior to trial* stated it assumed the prosecution would attempt to show this murder (R. 141, and see also R. 361). The court also charged the jury on "overt act" (R. 91-92) and the Luizzo murder (R. 97).

---

(7) Rule 7 (f). "Bill of Particulars. The court for cause may direct the filing of a bill of particulars . . ." Fed. R. Crim. Proc.

Since an overt act, the murder, was to be given such a prominent role, even though proof of an overt act *possibly* was not required for conviction, appellants submit they were entitled to be given information of such act as to name, date, time and place, as in a §371 conspiracy. *U. S. v. Lopez*, 26 FRD 174 (DC,NY). Judge Whittaker in *U. S. v. Smith*, 16 FRD 372 (DC,Mo), stated:

> "Without definite specifications of the time and place of commission of the overt acts complained of, and of the identity of the person or persons dealt with, there may be difficulty in preparing to meet the general charges of the information and some danger of surprise . . ." p. 375.

The court below further stated the defendants were not entitled to a bill of particulars because they were more aware of what was asked for than anybody else (R. 44). Judge Whittaker in *Smith* showed the fallacy of such reasoning:

> "Nor is it any answer to a motion for a bill of particulars for the government to say: 'The defendant knows what he did, and, therefore, has all the information necessary.' This argument could be valid only if the defendant be *presumed to be guilty* . . . Being presumed to be innocent, it must be assumed 'That he is ignorant of the facts on which the pleader founds his charges'." p. 375.

The United States attorneys assuredly had definite knowledge they would present many witnesses with evidence and testimony to try to establish the defendants murdered Viola Luizzo; they so informed the court by inquiring if certain evidence were admissible (R. 139); and the court itself, on the day of the trial, knew the defendants would have to meet this presentation by warning certain evidence would not be admissible (R. 139-140). In this posture of the matter, and by presuming the defendants to be guilty, the court did not exercise a sound discretion in denying the motion but abused its authority to the prejudice of defendants. A reversal is in order.

POINT IV

Admission of testimony and evidence over objection, where testimony and evidence is prejudicial to a substantial right of a defendant, is error.

In the following, proper objection was made as noted.

A. U. S. Exhibit 1 (R. 194), the plan of march and the temporary injunction issued thereon, and U. S. Exhibit 2 (R. 195), the order of this court declining to stay enforcement of the injunction, were admitted in error since they did not concern a federal right made definite by decision or rule of law. See Point I, *supra*. They would have probative value in contempt proceedings for violating the injunction.

B. U. S. Exhibit 3 (R. 204; 208-209), the Klan parade request, and U. S. Exhibit 4 (R. 204; 208-209), the parade permit, were erroneously admitted because defendants were not shown to have been connected with them and they had no probative value as to specific intent under §241. See Point VI, *infra*. This was a protest parade against the order of March 17, 1965 (R. 211), which order did not concern a federal right made definite by decision or rule of law. See Point I, *supra*.

C. U. S. Exhibits 6, 13 through 18 (R. 400), photographs of scenes at Cramton Bowl on March 21, 1965

(R. 229; 257-258), were erroneously admitted because they had no probative value as to specific intent under §241. See Point VI, *infra*. At most, the exhibits could be used in contempt proceedings to show knowledge of the court's order (Cf. 231-232). Otherwise, they merely show a peaceable assembly, a constitutional right.

D. U. S. Exhibit 10 (R. 400), 3 pictures of cars in the Klan motorcade of March 21 (R. 248-249), were never properly identified and hence erroneously admitted, nor did they have probative value. See Point VI, *infra*.

E. Rowe testified as to the organization of the Klan and the meaning of certain Klan expressions (R. 404-406). This was error because it was proof of nothing ıd sanctioned "guilt by association", and had no pro- ıtive value of the specific intent required in §241. See Point VI, *infra*. As was aptly stated by defense counsel, "Klan organization is not here on trial." (R. 404)

F. Rowe was allowed to testify, on the question of intent, that he saw a telephone line cut after Gene Thomas and Wilkins left a booth on March 25 (R. 413). This had no probative value as to a specific intent to deprive a person of a federal right made definite by division or rule of law. See Point VI, *infra*. It is further objectionable because the predicate was not laid as to the condition of the wire before they entered the booth.

G. The testimony of Rowe as to Klan activities with defendants and the purpose of the Klan (R. 440-442) was highly prejudicial as offering to prove a specific intent by mere association. That the purpose of the Klan was to maintain white supremacy was legitimate, in and of itself, under Amendment I, and the

addition of the phrase "by ballots or bullets", stated by Rowe to have been used "very often", adds nothing. In fact, one would have to infer defendants used this expression, which is not a reasonable inference, or infer they heard the phrase used, which did not appear, and further infer they ascribed to it. As an inference on an inference it was highly prejudicial, since the court on the basis of this statement alone admitted into evidence U. S. Exhibit 41, a sawed off shotgun found in Gene Thomas' home (R. 694-695; 708-709).

H. U. S. Exhibits 36, 37 and 38 were packages of rounds of .38 caliber ammunition (R. 662-663) and U. S. Exhibit 41 was a sawed off shotgun (R. 707). These were seized purportedly under a search warrant, U. S. Exhibit 35. Rules 41 (b) (2) and 41 (c)[8], Fed. R. Crim. Proc., are quite specific a valid warrant shall issue only on establishing the grounds therefor, one ground being the property had been used as a means of committing a criminal offense. These facts are considered pertinent: (1) The autopsy on the body of Viola Luizzo was concluded about 2:00 A. M., on March 26, and a mutilated .38 caliber bullet recovered (R. 553-555); (2) The search warrant was issued presumably during business hours of the United States Commissioner on March 26; (3) The warrant described the property as "guns, rifles, pistols, ammuni-

---

(8) Rule 41 (b): "Grounds for Issuance. A warrant may be issued under this rule to search for and seize any property. . . . (2) Designed or intended for use or which is or has been used as the means of committing a criminal offense; . . ."

Rule 41 (c): "Issuance and Contents. A warrant shall issue only on affidavit sworn to before the judge or commissioner and establishing the grounds for issuing the warrant . . . (and) he shall issue a warrant identifying the property . . ."

tion and various and sundry weapons"; (4) The criminal offense was "the shooting of Viola Luizzo"; (5) Eugene Thomas was arrested about 11:15 A. M., March 26 (R. 654, 670); (6) The search of Thomas' home was at 2:07 P. M., March 26. See Exhibit 35.

Appellants, particularly Eugene Thomas, assert the shotgun and ammunition were obtained by an illegal search and seizure in violation of Amendment IV.[9] No motion was made to suppress this evidence before the trial because "opportunity therefor did not exist."[10] Rule 41 (e), Fed R. Crim. Proc. The "shooting of Viola Luizzo" did not state a federal offense, although it was a "criminal offense". Appellants have been unable to locate any authority which answers the question of this case: Is a federal search warrant valid when it did not show on its face the property to be seized could be used as the means to commit a federal offense?[11] This is a nation of two sovereigns and homi-

(9) "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath and affirmation, and particularly describing the place to be searched, and the person or things to be seized."

(10) This supports the argument in Point III, *supra*, that the court abused its discretion in not allowing a bill of particulars.

(11) But see *U. S. v. Office 508 Ricou-Brewster Building*, 119 FSupp 24 (DC, La), wherein the court stated, at p. 26, an arrest warrant had to be founded on facts constituting probable cause a *federal* offense had been committed.

Particularly as to defendant Eaton, and the prejudicial effect of admitting the .22 caliber gun as to the other defendants, the court below erred in not allowing defense counsel to go into the arrest warrants (R. 704; 747-750). See *Giodenello v. U. S.*, 357 US 480.

cide is a state offense, not a federal one.[12] The court stated in its charge "that it is not necessary to establish the offense here charged (conspiracy) to prove that the defendants intended to kill or did kill Mrs. Luizzo." (R. 97) Appellants contend the search warrant was invalid because on its face only a state offense was shown, over which the United States had no jurisdiction, and also the homicide was not a necessary part of the proof of the alleged conspiracy, the federal offense involved. Assuming, *arguendo*, a federal offense did not have to be recited for a valid federal search warrant, then were "guns, rifles, pistols, ammunition and various and sundry weapons" the *means* used to commit the homicide? These items are not the "means"; the "means" in homicide is that agency which caused the death, the person who pulled the trigger. A gun may give evidence that the person caused the death, no more, since a gun in and of itself cannot cause a death and a conviction can be secured without the instrument. The validity of this analysis is buttressed by cases involving other types of crime. In *U. S. v. Harris*, 331 US 145, a search incident to a legal arrest revealed some draft cards, the possession of which was unlawful. The draft cards, being part and parcel of the crime, were "means", not mere evidence. In *U. S. v. Rabinowitz*, 339 US 56, forged government stamps

(12) Murder while committing a Sec. 241 conspiracy was a federal crime until the demise of Rev. Stat. Sec. 5509: "If, in the act of violating any provision in either of the two preceding sections, any other felony or misdemeanor be committed, the offender shall be punished for the same with such punishment as is attached to such felony or misdemeanor by the laws of the state in which the offence is committed."

Acquittal of the felony or misdemeanor in a state court was a bar to prosecution under this statute in the federal court. *U. S. v. Mason*, 213 US 115.

were seized. They were at the core of the crime of possession of the stamps. In *U. S. v. Olmstead*, 7 F2d 760 (DC,Wash), a search warrant issued to seize intoxicating liquors. Papers and documents indicating a conspiracy were taken and the court said illegally because they were only evidence. In *Woo Lai Chun v. U. S.*, 274 F2d 708 (CA9), the search warrant described certain items. Letters concerning the items were seized, and the court said illegally since they were not instrumentalities of the crime itself. See also *Marron v. U. S.*, 275 US 192. Appellants' contention is that the items described in the warrant were mere evidence. Some of the cases above involved a search incident to a valid arrest, but the principle remains the same with or without a search warrant that evi-[illegible]e cannot be seized since it is not that "means" of [illegible] 41 (b) (2). To put it another way, in *Rabinowitz* and *Harris* a conviction could not be obtained without the items seized. In *Olmstead, Woo Lai Chun* and *Marron*, conviction for conspiracy, if applicable, could be obtained without the items seized. See also *U. S. v. Lefkowitz*, 285 US 452. If the items described in this warrant be "means" and not evidence, then it follows all one would have to do to escape punishment for murder by shooting would be to destroy totally the weapon.

The warrant did not *particularly* describe the things to be seized as commanded by Amendment IV. What could be more general than "guns, rifles, pistols, ammunition and various and sundry weapons"? Were all these used in the shooting of Viola Luizzo? How could that be when it was known from a fragment previously recovered (R. 372; 555) and the bullet found on the autopsy (R. 555) that in all probability .38 caliber bullets had been fired into the car and one killed

her? And how could ammunition on the Thomas premises have been used in the shooting of Viola Luizzo? On its face, therefore, this was a general search warrant proscribed against by Amendment IV. While a search incident to a legal arrest cannot by its nature be particularized, a search warrant, whose office is a search before arrest, can be particularized, especially one issued after the commission of an offense and the search made after the arrest of a suspect. (Query: What purpose can a warrant after arrest serve except to obtain evidence?)

This search was not incident to a lawful arrest, so if possession of a sawed off shotgun be a federal offense, which was seemingly recognized (R. 94), still the offense was not committed in the presence of the searching officers so as to make its seizure legal. *U. S. v. Harris, supra.* Stated otherwise, if there be an entry under a legal search warrant, and during the search the FBI discovers the actual commission of another crime—which must be committed in their presence—then they may arrest for that crime and have the legal right as an incident of the arrest, without a warrant, to search the place contemporaneously in order to find and seize the things used to carry on the crime discovered.

Assuming, also *arguendo*, the shotgun and ammunition were legally seized they still would not be admissible, even on the question of intent (R. 709). Cf. *Woo Lai Chun v. U. S., supra.* No inference could be drawn from possession of this shotgun or ammunition defendant Thomas entertained the specific intent necessary for a §241 conspiracy. It was far too remote to have probative value on this issue.

Summarizing, appellants contend an illegal search and seizure because (1) the warrant was invalid since

no federal offense was shown on its face, (2) the items listed to be seized were evidence, and (3) the items were not particularized. If the warrant were invalid, the seizure was not justified as an incident to a legal arrest; and, if valid, the shotgun and ammunition were not admissible into evidence.

POINT V

The practice of allowing the prosecution to close the argument to the jury violates the due process clause of Amendment V, U. S. Constitution, even without objection.[13]

Mr. Doar opened the argument to the jury (R. 911-918); Mr. Hardeman concluded the argument (R. 912). Since *Brown v. Board of Education*, 347 US 483, 493-495, fn. 11, it is not unsophisticated to argue psychological effects as determinative of constitutional issues. Appellants urge a reconsideration of the rule first announced in *U. S. v. Bates*, Fed Cas No. 14,543, 2 Cranch, CC405, which gave to the U. S. Attorney the right in criminal prosecution to close the argument before the jury on the general issue[14]. This involves so fundamental and basic a proposition this Court can and should consider the question under the "plain error" rule.[15]

(13) It is the right of counsel for every litigant to press his claim, even though it appears far-fetched and untenable, to obtain the court's considered ruling. *Sacher v. U. S.*, 343 US 1, 9.

(14) Rule 57, Fed. R. Crim. Proc., leaves to the District Court the order of argument. See *Hardie v. U. S.*, 22 F2d 803 (CA5); *U. S. v. El Rancho Adolphus Products, Inc.*, 140 FSupp 645 (DC, Pa).

(15) Rule 52 (b) "Plain error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Fed. R. Crim. Proc. See also *Wagner v. U. S.*, 171 F2d 354, 364 (CA5).

As in debate, apparently the rationale for the rule is to compensate the prosecution for having the burden of proof, or ultimate risk of non-persuasion; but even then it must be obvious defendants are unfairly handicapped, having no opportunity to reply. See Musgrove, *Competitive Debate Rules and Techniques*, (Wilson,NY,1957) pp. 29-30. This even though the prosecution not be allowed to develop new arguments. See *Moore v. U. S.*, 344 F2d 558, 560 (CA,DC). Although a jury be charged as to the burden of proof and the presumption of innocence (R. 86-88), nonetheless the determinative beliefs of the jury depend very largely on the final argument. See Summers, Whan & Rousse, *How to Debate*, (Wilson,NY,1963) pp. 201-271.

Some states by statute, see, *e.g.*, *Meade v. State*, 85 So2d 613 (Fla1956); *Hart v. State*, 88 GaApp 334, 76 SE2d 561, allow a defendant the "important right" to conclude the argument where he offers no testimony but his own. Others do this by rule. See, *e.g.*, *State v. Roper*, 203 NC 489, 166 SE 314. Still other states follow the practice a defendant has no right to close even when he does not offer testimony. See, *e.g.*, *Royals v. State*, 36 AlaApp 11,56 So2d 363. The differing procedures in state and federal courts concerning the right to close to the jury, particularly in the present advanced state of psychological study, indicate a new examination of this proposition is overdue in terms of federal constitutional standards.[16] The psychological effects of having the final argument to the jury in the prosecution must, of necessity, dilute the presumption

(16) *Hall v. Ware*, 92 US 778, affirming a plaintiff's right to open and close argument to the jury in a civil case, is the last case in the Supreme Court found to treat the topic. Civil defendants do not have a presumption of innocence.

of innocence clothing a defendant. Such a dilution, it is urged, cannot but violate the due process clause of Amendment V.

POINT VI

The failure of a court in a conspiracy trial under 18 USC Sec. 241 to charge the jury the defendants must act with a specific intent to interfere with the federal right in question, which specific intent must be proved by the prosecution, is reversible error, as in violation of Amendment V, U. S. Constitution, even without objection.

In *Price*, the Court stated:

> "This Court has rejected the argument that the constitutionality of §241 may be affected by undue vagueness of coverage. The Court held with reference to §242 that any deficiency is cured by the requirement that specific intent must be proved. *Screws v. United States*, 325 U. S. 91. There is no basis for distinction between the two statutes in this respect. See Williams I, 341 U. S., at 93-95 (Douglas, J.)." 16 Led2d 279, fn20.

Screws teaches a requirement of a specific intent to deprive a person of a *federal right made definite by decision or rule of laws* saves the act from any charge of unconstitutionality, and *the issue must be submitted under appropriate instructions to the jury. Screws v. U. S., supra*, pp. 101, 103. A close reading of the charge on the technical aspects of conspiracy (R. 88-96) reveals only general instructions the evidence must show defendant "knowingly and willfully participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy." At no place did the Court charge that the jury had to find a specific intent to deprive a person of a federal right. Furthermore, the alleged federal right by court order

to participate in a protest march had not been mad definite by decision or other rule of law, a requiremen of *Screws* recognized in the Court's opinion in *Guest* 16 Led2d 247. Also, in Justice Brennan's separat opinion he said:

> "But, as the Court holds, a stringent scienter re quirement saves §241 from condemnation as criminal statute failing to provide adequate no tice of the proscribed conduct. . . . We have con strued §241 to require proof that the person charged conspired to act in defiance, or in reck less disregard, of an announced rule making th federal right specific and definite . . ." 16 Led2 265.

The court compounded and magnified its error in a supplemental charge (R. 107-108) which defined "con-spiracy" at the jury's request. Specific intent was no mentioned; specific intent had to be charged to avoi the unconstitutionality of vagueness.

For these failures to charge on specific intent of th alleged conspirators concerning the alleged specifi and definite federal right, the court below must b reversed, even without objection, under the "plai error" rule. *Supra*, fn. 15. Likewise this argumen supports the propositions the indictment as to para graph 4 should have been dismissed and the motio for judgment of acquittal granted.

POINT VII

For a court to instruct a jury, even at the request of a defendant, that his failure to testify does not create any presumption against him is fundamental error in violation of Amendment V, U. S. Constitution.

The court below, at the request of the defendants, instructed the jury on the effects of their failure to testify (R. 96-97). Title 18 §3481[17] reads that failure of a defendant to request to be a witness shall not create any presumption against him. *Bruno v. U. S.*, 306 US 287, held this provision gave an accused an indefeasible right to have the jury instructed by the court his failure to testify did not create any presumption against him. This decision rested on §3481. In *Griffin v. California*, 380 US 609, the Supreme Court stated in essence the provision of the California Constitution which allowed court and prosecutor to comment on the failure of defendant to testify violated the self-incrimination guaranty of Amendment V, as the same is made applicable to the states by Amendment XIV. Thus, the right to have the court refrain from comment is now a constitutional right and not a statutory one in the federal courts. Compare *Wilson v. U. S.*, 149 US 60. Since the right is a constitutional

(17) "In trial of all persons charged with the commission of offenses against the United States, and in all proceedings in courts martial and courts of inquiry in any State, District, Possession or Territory, the person charged shall, at his own request, be a competent witness. His failure to make such request shall not create any presumption against him."

one, serious doubt is cast upon the validity of *Bruno*. See *Griffin, supra*, p. 615, fn. 6.[18].

Prior to *Griffin*, the majority of states held there was a duty to grant a request to charge that failure to testify should not be taken against a defendant. Anno., 84 Led 261, *et seq.* A basis for such a conclusion was waiver by the defendant. See, *e.g.*, *Carter v. State*, 6 OklaCrimRep 232, 118 P 264. Other state courts had held such a request to charge should be refused. See, *e.g.*, *Roberson v. Com.*, 274 Ky 49, 118 SW2d 157; *Hanks v. Com.*, 248 Ky 203, 58 SW2d 394; *Tines v. Com.*, 25 KyLRep 233, 77 SW 363. See also *State v. Long*, 324 Mo 205, 22 SW2d 809 (statute forbade comment on testimony). The rationale of this line of cases appears to be that the court's giving the instruction did the very injury which it was the object of the law to prevent.

Before *Griffin*, a defendant had only a statutory right which precluded comment in a federal trial. Now the right is a fifth amendment one. The question becomes: Does a defendant by requesting a charge waive his constitutional right for the court to refrain from commenting on his failure to testify? The answer, in reason and logic, must be "No." When a defendant takes the stand as a witness in his behalf he does so *entirely* at his own volition; and the court would have no power or authority to prevent him from doing so. By refusing to take the stand he has done so *entirely* at his own volition; and the court would have no power or authority to compel him to do so. But when a defendant merely requests a charge, his own volition

(18) "We reserve decision on whether an accused can require as in *Bruno v. United States*, 308 US 287, that the jury be instructed his silence must be disregarded."

must be supplemented by action by the trial court, upon whose judge rests the duty of charging the jury as to the law. Courts frequently refuse instructions which are not the law, and in so doing reject the position of a defendant. A defendant, as noted, has a constitutional right for the judge not to comment on his failure to testify, *i.e.*, since *Griffin*, a judge is under a constitutional duty not to comment. When a judge decides to give such a charge requested by the defendant, which decision belongs to the judge alone, then that judge by his own act has breached his constitutional duty not to comment. He has determined the law to be he can comment on the failure to testify. Since that is not the law, the only action he can take nstitutionally on a request by a defendant to instruct jury on the effects of his failure to testify is to ny it.

The rationale of the minority of states is persuasive. There can be no waiver of this now substantial constitutional right and corresponding duty, and hence, in the present case, there was reversible error. See *U. S. v. Lawson*, 337 F2d 800, 811 (CA3).

POINT VIII

A supplemental charge to a jury in a criminal case which is coercive demands a reversal of a verdict and judgment of conviction.

After the jury had been deliberating about 8½ hours and had been retired for deliberations some 24 hours (R. 103-113), they reported a hopeless deadlock (R. 114). The court, *sua sponte*, gave a supplemental charge, the greater part of which tracked that charge approved in *Allen v. U. S.*, 164 US 492. See also *Orton v. U. S.*, 221 F2d 632 (CA4). The court, however, added to the charge in language set forth in the Statement of the Case, *supra*, p. 41. The charge was objected to (R. 117).

The statement concerning the time the jury had deliberated, it is submitted, was coercive in that these 12 men could more properly construe it as one the jury would be forced to deliberate, no matter how long, until a verdict was reached (R. 115). Coupled with the statement it was "very desirable" for the jurors to agree upon a verdict (R. 115), the instruction was tantamount to "You have got to reach a verdict in this case." This was reversible error. *Jenkins v. U. S.*, 380 US 445.

Expense has absolutely nothing to do with a jury reaching a verdict, yet expense was given explicitly as a reason a verdict should be reached (R. 115). In *Wolin v. U. S.*, 211 F2d 770 (CA4), expense was mentioned; but there, contrary to here, the court instructed the jury by saying costs had nothing to do with a verdict and was not to be taken into consideration in determining guilt or innocence. *Id.*, at 772. Without the benefit of the clarifying instructions of *Wolin*, it is submitted the charge as to expense was coercive and erroneous requiring a reversal.

POINT IX

The evidence, taken in the light most favorable to the prosecution, manifests it was not sufficient to support a verdict and judgment of conviction and the verdict of judgment was against the great weight of the evidence.

The defendants moved as for a judgment of acquittal when the United States rested (R. 823). Evidence for defense primarily was directed toward impeachment of certain witnesses and an alibi (R. 826-910). Appellants would argue the testimony and evidence with each and every doubt resolved in favor of the prosecution precludes everything except a verdict and judgment of "Not Guilty". Appellants would give full weight to the testimony of Gary Thomas Rowe, Jr., an acknowledged paid informer whose testimony was not thereby invalidated but which fact would go to the weight thereof; and the court may properly should have instructed the jury on paid informers. *U. S. v. Baxter*, 342 F2d 773 (CA6).

The part of Viola Luizzo in the protest march came only from Leroy Moton. He got her car on March 18 and had it until March 25 (R. 594-595). For what purpose she gave him the use of this car is not disclosed. On March 24, Moton carried her to the march (R. 595), but it is not known whether she went as a mere spectator, or for some other purpose entirely apart from a participation therein. On the 25th, after the march was over, Viola Luizzo took some people from St. Jude to the airport and Selma (R. 596). Although not shown to have been of his own knowledge, Moton said these people had participated in the march (R. 596). He further stated he did not know whether or not she was working with the march (R. 601). Viola Luizzo, then, had lent her car to Moton for an unknown purpose; had gone to St. Jude for an unknown purpose; had given a ride to some participants. Appellants contend with no proof of her participation in the march as averred in paragraph 4 of the indictment, her modicum of support could not be raised to the point it could be said she had exercised a right or privilege secured to her by the Constitution or laws of the United States. See Points I and II, *supra*. If so, the cloak of federal power extended to anyone and everyone not participating in the march who gave money, food or lodging; who spoke or wrote in favor of the march; who was a member of any organization that endorsed the march, etc., *ad infinitum*. The only possible conclusion which could be drawn to escape Amendment V due process vagueness was that Viola Luizzo had not exercised any right within the purview of §241, and the crime, if any, was a substantive one committed in concert, not a conspiracy.

This Court is asked to take judicial notice of approximate distances between certain municipalities and points in the State of Alabama. *Carroll v. U. S.*, 267 US 132, 159, 160; *Weaver v. U. S.* 298 F2d 496 (CA5); *Mutual Ben. Life Ins. Co. v. Robison*, 58 F 723 (CCA8). (*See Ricaud v. American Metal Co.*, 246 US 304, as to determinative effect a fact established by judicial notice may have in an appellate court). The distances are well within limits testified to (R. 339; 350-351; 387).

Rowe testified they were stopped at about 6:18 P. M., by state troopers at a radar post enroute from Montgomery to Selma on Thursday, March 25, 1965 (R. 418), confirmed by McGaha (R. 629). This point was 11 miles east of Selma (R. 624). Rowe said his group went to Silver Moon Cafe, about 2 or 3 blocks from Pettus Bridge (R. 420), arriving at a time closer

to 7 than 6 P. M. (R. 499). Ouida Larson testified the four came in between 7 and 8:30 P. M. (R. 572). Rowe stated they were in Silver Moon about 35 or 40 minutes, perhaps a little longer (R. 500). If we grant Rowe arrived at Silver Moon at 6:45 P. M., and stayed 35 minutes, the time was 7:20 P. M. The trip to the vicinity of Brown's Chapel Church took 20 or 25 minutes (R. 503). The time was 7:40 P. M., and they were at the 3rd traffic light from the bridge (R. 503). Leroy Moton was quite positive he and Viola Luizzo left Selma at 7:34 P. M. (R. 609).

At the radar point 11 miles east of Selma, Rowe said he saw a Volkswagen type station wagon (R. 430). The ticket for this vehicle was timed at 7:50 P. M. (R. 628). Rowe said the speed along this 11 miles went up to 90 and 100 miles an hour (R. 428). From Selma to the scene was 27.4 miles (R. 363), hence 16.4 miles from the radar point to the scene, and 3.1 miles from that point to the end of the 4 lane highway (R. 363). Rowe stated they were going 60 to 65 miles an hour when the shooting occurred (R. 504); Shanahan said Rowe told him it was in excess of 90 and 100 miles an hour (R. 315). At 60 miles an hour they arrived at the scene about 8:17 P. M. Rowe told Shanahan the shooting occurred about 8:30 P. M. (R. 310). Moton said the time was about 8:00 P. M. (R. 610).

Rowe stated to Shanahan that Viola Luizzo turned and looked directly at the automobile just before Wilkins and Eaton fired (R. 313). Rowe confirmed this position of Mrs. Luizzo (R. 433), and he said Wilkins fired 2 fast shots into the front window when the back of their car was just about even with the front of hers and before Eaton fired (R. 433). After Wilkins fired Thomas speeded up to get around the Luizzo car and

this was when Eaton started to fire (R. 433). (The testimony of Marion Williams, R. 769-770, is entirely inconsistent with this). Dr. Shoffeit testified the bullet entered the head at a point "slightly forward of the lower part of the left ear and ranged to the right, slightly upward and slightly to the rear to a point at the base of the brain where the cord is connected to the brain" and the cord was almost severed at the base of the brain (R. 554). Marion Williams testified the only bullet hole found in the driver's window, which bullet went into the rain gutter, was about 2½ inches down from the top and about 6 or 8 inches forward of the back edge of the window (R. 765). If Viola Luizzo were looking directly at the Rowe car when the shots were fired and Rowe and she practically opposite each other it seems highly improbable the bullet would have struck Viola Luizzo where it did and take the course it did. And, if Thomas speeded up immediately it is similiarly highly improbable Rowe could have seen the window "shatter and break" (R. 309-313), especially with Wilkins occupying the right hand seat.

Rowe said after the shooting they accelerated to 90 or better, and threw the casings out at that speed (R. 506); Rowe to Shanahan was 110 miles an hour (R. 316). The casings found by Riley were .55 of a mile from the scene (R. 591), which at 90 miles an hour would take 22 seconds, at 110 miles an hour about 18 seconds, all the while engaged in conversation and unloading weapons (R. 317-318). It will be noted Agent Riley found the .38 caliber casings scattered along the shoulder of the road from 2 to 8 or 9 feet from the edge (R. 589). Common sense dictates the conclusion casings thrown from an automobile traveling from 90 to 110 miles an hour would be caught in the windstream, carried to the rear of the car, and in all probability

would be in the road. (Query: Where were the .22 caliber casings thrown out almost simultaneously?)

Leaving the scene at about 8:17 P. M., they proceeded to St. Francis Motel, arriving about 8:37 P. M. (R. 509). It was about 50 miles from Pettus Bridge to St. Francis (R. 386), so it was about 22.6 miles from the scene to St. Francis. If Thomas were driving at speeds 90 and above, this took only 15 minutes. There was a 90 degree turn at St. Francis to get onto the bypass, a 90 degree turn at an entrance to Maxwell Field, and another 90 degree turn to get onto U. S. 31 North. The Court is asked also to notice judicially from the point around the intersection of U. S. 31 and 80 to Prattville was a congested area, and that it was approximately 73.3 miles from Montgomery (St. Francis) to Alabaster, two incorporated municipalities in Alabama. They detoured for about 12 miles (R. 435; 511) and stopped at a service station about 6 minutes (R. 511). Total distance was 85.3 miles and at 90 miles an hour *average* this took about 64 minutes or 70 minutes total. The time was about 9:47 P. M., in Alabaster, another congested area, or 9:42 P. M., if a 90 mile an hour *average* from the scene to St. Francis is allowed.

From Alabaster to Bessemer, both incorporated municipalities in Alabama, over County Roads 44, 17 and 52 and State 150, was about 23.4 miles, with three 90 degree turns in Alabaster, 1 to get onto County 17, and 5 miles of winding, narrow road on County 52. Bessemer was also a congested area. This 23.4 miles at 90 miles an hour *average* took about 17 minutes and the time was 9:59 P. M. From Bessemer to Brighton, both incorporated municipalities, and both congested, was about 1.3 miles, or 1 minute. The time was 10:00

P. M., at Brighton VFW, which was Rowe's positive outside time of arrival at VFW (R. 513). Thus, the Rowe group traveled about 132.6 miles in 1 hour 33 minutes to average about 90 miles an hour. This is fantastic when one considers the congested areas traversed, with traffic lights and the like; the 90 degree turns; and with 20,000 to 30,000 people in Montgomery that day there most certainly was considerable traffic on the highway. It is submitted no reasonable man could accept this, or if he did, he was influenced by bias or prejudice. The statement of Thomas to Gettings (R. 724) was more reasonable and consistent in that the group went back to Birmingham (Bessemer) via Selma, which was about 120 miles through Prattville or about 100 miles through Maplesville and Clanton. Leaving Selma around 7:45 P. M., the group, at a realistic *average* speed, arrived within the time testified to.

Appellants contend the verdict and judgment was against the great weight of the evidence, and inasmuch as primary reliance was had by the United States on the murder of Viola Luizzo, there should be a judgment here of reversal.[19]

---

(19) Many, many questions could be asked about this case, any one of which would raise a doubt in the mind of any reasonable man. However, to belabor the evidence now would add nothing more to the error shown.

SUMMARY AND CONCLUSION

THE JUDGMENT OF CONVICTION OF COLLIE LEROY WILKINS, JR., AND EUGENE THOMAS SHOULD BE REVERSED.

Appellants submit demonstrative and prejudicial error occurred in the trial: (A). *Price* and *Guest* make it clear a §241 indictment is fatally defective which does not allege state involvement where an Amendment XIV right is concerned, *i.e.*, one not secured by the Constitution and laws of the United States. (B). An indictment is fatally defective which enlarges the statutory definition of the crime. (C). Abuse of judicial discretion in denying a bill of particulars is error to a reversal. (D). Testimony and evidence admitted over objection which works a substantial injury requires a reversal. (E). Allowing the United States to close the argument on the general issue is a violation of due process. (F). Failure to charge on specific intent causes §241 to be vague in violation of the due process clause. (G). An instruction to a jury on the failure to testify violates the self-incrimination clause of Amendment V. (H). A coercive charge to a jury violates due process. (I). For proof of guilt to be predicated on conjecture and against the great weight of the evidence is error to a reversal.

Respectfully submitted,

Arthur J. Hanes

Arthur J. Hanes
Suite 506, Frank Nelson Building
Birmingham, Alabama 35203

Fred Blanton, Jr.
Suite 1627, 21-21 Building
Birmingham, Alabama 35203

CERTIFICATE OF SERVICE

I, Fred Blanton, Jr., of counsel for Collie Leroy Wil kins, Jr., and Eugene Thomas, appellants herein, an a member of the Bar of the United States Court o Appeals for the Fifth Circuit, hereby certify I serve the requisite copy of the foregoing Brief for the Ap pellants upon the United States Attorney for th Middle District of Alabama, Montgomery, Alabama the Honorable Ben Hardeman, by depositing the sam in the United States mails, postage first class prepaid and properly addressed to him at his office in Mont gomery, Alabama.

It is further certified a copy of Brief for Appellant was served on the Honorable John Doar, Assistant At torney General, Washington, District of Columbia, b mailing the same to him at his office in Washingtor District of Columbia, United States postage first clas prepaid.

This the .... day of June, 1966.

Fred Blanton, Jr.
Of Counsel for Appellants
Suite 1627
Twenty-one Twenty-one Buildin
Birmingham, Alabama 35203

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. DeLoach

DATE: July 7, 1966

FROM : A. Rosen

SUBJECT: EUGENE THOMAS, ET AL;
VIOLA LIUZZO - VICTIM
CIVIL RIGHTS; ELECTION LAWS

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Boyd
1 - Mr. Wick
1 - Mr. Sullivan

The Bureau has received a copy of Appellants' Brief to the Fifth Circuit Court of Appeals, New Orleans. Brief reviewed. No criticism made of FBI. Appellants raise nine points in argument; some concern wording of the indictment and/or the search warrant prepared by the U. S. Attorney and/or Departmental Attorney. Subjects are Klan members and copy of Brief sent by their attorneys to the Director. No acknowledgment being made. One of Appellants' attorneys is Arthur J. Hanes who entered on duty as a Special Agent on 10-25-48 and resigned 8-4-51. Hanes is also a former mayor of Birmingham, Alabama, and has been a staunch segregationist. No derogatory information located in Bufiles on other attorney Fred Blanton, Jr.

BACKGROUND OF CASE

Mrs. Viola Liuzzo, civil rights worker of Detroit, Michigan, was shot and killed on the night of 3-25-65 in Lowndes County, Alabama. She had participated in the march that day from Selma to Montgomery and was engaged in transporting marchers back to Selma at time of her death. On basis of information furnished by Bureau informant Gary Thomas Rowe, three subjects were identified and arrested on Federal Civil Rights charges (Title 18, Section 241), within twenty-four hours of the shooting.

PROSECUTIVE ACTION

One of the subjects, Collie Leroy Wilkins, was tried twice in state court and his second trial ended in acquittal. The three subjects were tried in U. S. District Court on the Civil Rights charges and were found guilty by jury on 12-3-65. Each was sentenced to ten years and released on $10,000 bond pending appeal. One subject, William Eaton, suffered a hear attack 3-9-66, and died.

REVIEW OF APPELLANTS' BRIEF

Appellants' Brief was filed 6-20-66. A review of

Bufile 44-28601
Enclosure - one copy of Appellants' Brief

JJB:cry (8)

56 JUL 25 1966

ENCLOSURE ATTACHED

the Brief determined the appeal is based on issues of law and trial procedures. The Appellant set forth portions of testimony of fourteen Special Agents of the FBI as reflected in the trial record. No allegations or criticisms were made about the FBI or its employees. The Appellant raises nine points in the Argument. Some of the points concern wording of the indictment and/or the search warrant prepared by the U. S. Attorney and/or Departmental Attorney.

Point number IV alleges that a shotgun and ammunition seized on 3-26-65 at subject Thomas' home were obtained by an illegal search and seizure. However, the Special Agents obtained the weapon pursuant to a search warrant issued by the U. S. Commissioner on same date. The evidence seized was admitted into the record during the trial.

Appellant contends that the search warrant describing the property as "guns, rifles, pistols, ammunition and various and sundry weapons" connected with "the shooting of Viola Liuzzo" was invalid because (1) the shooting was a state crime and no Federal offense was shown on the face of the warrant, (2) the items to be seized were evidence, and (3) the items seized were not particularized.

Copies of the Brief have been served on Assistant Attorney General John Doar of the Civil Rights Division and no dissemination is required by the Bureau.

ACTION:

This appeal is being followed by the New Orleans Office and you will be kept advised.

DO-6

OFFICE OF DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

MR. TOLSON
MR. DELOACH
MR. MOHR
MR. WICK
MR. CASPER
MR. CALLAHAN
MR. CONRAD
MR. FELT
MR. GALE
MR. ROSEN
MR. SULLIVAN
MR. TAVEL
MR. TROTTER
MR. JONES
TELE. ROOM
MISS HOLMES
MRS. METCALF
MISS GANDY

June 27, 1966

The attached copy of the Brief for Appellants in the Collie Leroy Wilkins, Jr. and Eugene Thomas, versus United States of America case was sent to the Director from Fred Blanton, Suite 1627, 2121 Building, Birmingham, Alabama.

Frad Blanton, Jr. was one of the attorneys for the appellants.

Numerous references are made to the FBI and Bureau personnel throughout the Brief.

nm

1 ENCLOSURE

EX-103

REC 14 44-28601-736

NOT RECORDED
16 JUL 14 1966

56 JUL 25 1966

TELEPHONE
251-6821

FRED BLANTON

LAW OFFICES
SIXTEENTH FLOOR
2121 BUILDING

EIGHTH AVENUE AT TWENTY-SECOND STREET, NORTH
BIRMINGHAM, ALABAMA 35203

ENCLOSURE