~~NdeBK:SSR:jka~~

7 Katzenbach
Copeland
Rosdeitcher
Files

4 J. Edgar Hoover, Director
4 Federal Bureau of Investigation

4 Nicholas deB. Katzenbach
4 Assistant Attorney General
4 Office of Legal Counsel

4 FEB 19 1962

4 Authority of United States Marshals to Protect
Witnesses Appearing Before the Civil Rights
Commission and its State Advisory Committees.

207 B1
2/19

You requested the opinion of this Office as to the scope of the authority of United States Marshals to afford protection to witnesses appearing before the Civil Rights Commission and its State Advisory Committees.

Witnesses appearing before either of these bodies to offer information relating to such matters as the denial of equal protection of the laws to citizens of the United States are exercising a right secured to them by the Constitution. See Motes v. United States, 178 U.S. 458 (1900). Consequently, the Civil Rights Division in its memorandum of January 15, 1962 advised you that such witnesses would be protected against interference with that right by 18 U.S.C. §§ 241 and 242 which make it a crime for persons to conspire "to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same. . ." and for anyone to, "under color of any law, statute, ordinance, regulation, or custom, willfully [subject] any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. . . ."

In addition, the Civil Rights Division advised you that hearings held by the Civil Rights Commission were "proceedings" within the meaning of 18 U.S.C. § 1505 which provides:

10 "Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress; or

10 "Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein; or

10 "Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress-"

10 "Shall be fined not more than $5,000 or imprisoned not more than five years, or both."

On the other hand, they advised you that because neither the statute nor the Civil Rights Commission by-laws contemplated that the State Advisory Committees would conduct formal hearings but would merely receive information from interested persons that these committees did not conduct "proceedings" within the meaning of 18 U.S.C. § 1505.

Because the right of witnesses to appear before these bodies is secured to them by the Constitution and protected by the laws of the United States, it appears that the Attorney General has ample authority to use marshals for the protection of such witnesses. The Attorney General may use United States

Marshals to enforce the Constitution and laws of the United States. In In Re Neagle, 135 U.S. 1 (1890) the Supreme Court founded upon the Executive's duty to take care that the laws are faithfully executed the authority of the Attorney General to direct marshals to protect a federal judge carrying out his duties. Id. at 63-64. In the course of its opinion dealing with the Executive power to use marshals the court quoted with approval the following language from Ex Parte Siebold, 100 U.S. 371, 394 (1880):

> "We hold it to be an incontrovertible principle, that the government of the United States may, by means of physical force, exercised through its agents, execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent." In Re Neagle, supra at 60. (Emphasis supplied).

Acting under this authority, the Attorney General, for example, used marshals in the Montgomery, Alabama bus incident last year to protect the rights of interstate passengers. In using marshals to see to it that the laws are enforced the Attorney General may also use them to take prophylactic measures, such as providing protection in the face of a threatened interference with the laws. In Re Neagle, supra, at 59.

As a consequence, there seems little doubt that the Attorney General could, under 28 U.S.C. § 547 (c) authorizing him to direct marshals in the performance of public duties, direct marshals to protect, if necessary through the use of force, witnesses appearing before the Civil Rights Commission or the Advisory Committees, in the face of an actual or threatened interference with their rights as guaranteed by the Constitution and the laws of the United States discussed above. Such protection could also be justified as an aid to the carrying out of the lawfully authorized functions of the federal investigatory bodies involved here.

An additional source of such authority is 28 U.S.C. § 349

which gives a United States Marshal the same powers as a sheriff within the state in which he is acting. Violations of federal law or rights can be considered breaches of the national peace, compare In Re Neagle, supra, at 69. If state law authorizes sheriffs to keep the peace and prevent breaches thereof, United States Marshals would have the power to prevent such breaches of the national peace.

Finally, the United States Marshals may protect witnesses through their power to arrest without a warrant (1) "for an offense against the United States committed in their presence" and (2) "for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony." 18 U.S.C. § 3053. Acts against witnesses which come within 18 U.S.C. §§ 241, and 1505 are felonies.

While it seems quite clear that the Attorney General has authority to use marshals for the protection of witnesses appearing before the Civil Rights Commission and the State Advisory Committees, a separate question arises as to the propriety of doing so in particular circumstances. In situations where the state or local law enforcement machinery promises to be adequate protection for such witnesses it would seem preferable to leave this task to the State. This approach would seem not only to be the most consistent with the principles of federalism, but would seem dictated by the practical limitations on the availability of federal law enforcement resources. United States Marshals should probably not be used unless the State or locality is unwilling or unable to provide protection.

Since your inquiry was directed only to the authority of United States Marshals we have not discussed herein the authority of Agents of the Federal Bureau of Investigation to perform similar functions should that be felt appropriate.