

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

SAMUEL BAILEY, JOSEPH BROADWATER
and BURNETT L. JACOB, on behalf
of themselves and others
similarly situated,

Plaintiffs

v.

JOE T. PATTERSON, Attorney
General of the State of
Mississippi, et al.,

Defendants

CIVIL ACTION

NO. 3133

SUPPLEMENTAL BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE

This supplemental brief is addressed to (1) the motion to dissolve the three-judge court; (2) the motion to strike the City of Jackson from the complaint; and (3) the motions asking this Court to abstain.

I

The City of Jackson, Mississippi, and its Mayor, Commissioners, and Chief of Police -- defendants in this action -- have moved to dissolve the three-judge court "and to remand this action for further hearing before the United States District Court in which the amended complaint was originally filed."

In their motion, these defendants say that the amended complaint "raises primarily factual issues which may not properly be addressed to a three-judge Court"; that these issues involve the alleged policy, custom, practice and usage of the movants in segregating the

... races under color of sections 2087.5 and 2089.5 of the Mississippi Code of 1942, as amended;^{1/} that the constitutionality of these provisions of the Mississippi Code is not attacked, and that, although the amended complaint does attack the constitutionality of certain segregation statutes, it "now affirmatively appears that none of the plaintiffs have ever been arrested under said statutes and that in fact no arrests have been made under said statutes for more than ten years." The movants conclude "[t]hat this three-judge Court is without jurisdiction over the subject matter or the parties under the issues raised by the amended complaint."

First. The plaintiffs urge that the defendants, under color of statutes of the State of Mississippi, including breach of the peace and disorderly conduct statutes, are pursuing a policy, practice, custom and usage of segregating Negro and white persons on common carriers and in terminals and terminal facilities in Mississippi. 28 U.S.C. 2281 provides in pertinent part as follows:

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute * * * shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

^{1/} These statutes, and section 2087.7 of the Mississippi Code of 1942, as amended, will be referred to in this memorandum as the "breach of the peace and disorderly conduct" statutes.

Under 28 U.S.C. 2281 where the plaintiffs claim, in effect, that a state statute is unconstitutional as applied, a three-judge court is required, Query v. United States, 316 U.S. 486, 490 (1942); Stratton v. St. Louis S.W. Ry. Co., 282 U.S. 10 (1930); Wreiole v. Waterfront Commission of New York Harbor, 132 F. Supp. 166 (S.D. N.Y. 1955), unless the statute cannot reasonably be construed to authorize the conduct complained of. Query v. United States, supra (distinguishing Ex parte Bransford, 310 U.S. 354 (1940) and Phillips v. United States, 312 U.S. 246 (1941)).

In this case, any injunction which restrains the defendant state and city officials from pursuing the alleged policy, practice, custom and usage of segregation will necessarily restrain them from continuing to apply criminal statutes for the purpose of maintaining such segregation. Since criminal proceedings actually have been instituted against many members of the class represented by the plaintiffs under those statutes, it cannot with confidence be said that the statutes may not reasonably be construed to authorize the conduct complained of.

To be sure, in the typical case in which plaintiffs challenge the action of state officials, but not the legislative authority under which they assume to act, it has been held that there is no necessity for convening a three-judge court. Ex parte Bransford, supra^{2/}. But where the plaintiff seeks "to forestall the demands of some

2/ Even where the validity of state laws is challenged, if the case can be disposed of on factual grounds alone, without deciding whether a state statute is unconstitutional, it has been held that a three-judge court is not required. Wichita Falls Junior College District v. Battle, 204 F. 2d 632 (C.A. 5, 1953), cert. denied, 347 U.S. 947; Beal v. Holcombe, 193 F. 2d 384 (C.A. 5, 1951), cert. denied, 347 U.S. 974.

general state policy, the validity of which he challenges," rather than a "single, unique exercise" by a state official of the prerogatives of his office, Phillips v. United States, 312 U.S. 246, 253 (1941); Penagaricano v. Allen Corp., 267 F. 2d 550, 556 (C.A. 1, 1959), and where, as here, the granting of injunctive relief will necessarily result in restraining the continued application, in a particular manner, of a state criminal statute, we believe that a three-judge court is required under 28 U.S.C. 2281.

Second. Even if a three-judge court were not required for the granting of an injunction restraining the future enforcement, in a particular manner, of state criminal statutes, a three-judge court nevertheless would be required here.

The amended complaint in this case specifically and repeatedly attacks, on federal constitutional grounds, the validity of specified Mississippi statutes requiring racial segregation on common carriers and in waiting room and rest room facilities utilized by common carriers, and imposing criminal penalties upon carriers and persons refusing to abide by such segregation (Amended Complaint, paragraphs 2, 3, 12, 15). It alleges that the Attorney General of Mississippi is under a duty to enforce these statutes, and threatens to enforce them against the plaintiffs and the defendant carriers if such statutes are violated by the plaintiffs or the defendant carriers (Amended Complaint, paragraph 12). In paragraph 15 of the Amended Complaint it is alleged that each defendant, under color of the challenged statutes, as well as under color of the breach of the peace and disorderly conduct statutes and an ordinance of the City of Jackson, have pursued a

policy, practice, custom and usage of segregating Negro and white persons on common carriers in the State of Mississippi, and in all depots, stations and terminals utilized by common carriers in that State, including the rest room and restaurant facilities of the airport terminal in Jackson, Mississippi. In paragraph 16 it is alleged, inter alia, that the plaintiffs and members of their class have suffered and continue to suffer irreparable injury as a result of the enforcement or threat of enforcement of the challenged state statutes. The prayer for relief specifically asks this Court to grant a preliminary and permanent injunction enjoining the defendants, who include state officials, from continuing to enforce these segregation statutes. Since the complaint attacks the constitutionality of state statutes and seeks to restrain their enforcement by state officers, this three-judge court was properly convened.^{3/}

The movants do assert that the segregation statutes are not being enforced. But this contention is properly addressed to the jurisdiction of the court as a federal court, i.e., to whether there is a "case or controversy." It does not go to the question of whether the case should be heard by three judges or by one judge.

The movants assert, however, that the "primary issues" raised by the amended complaint involve the arrests under the breach of the peace and disorderly conduct statutes, and the alleged policy, custom, practice and usage of the movants in segregating the races under color

^{3/} Movants do not contend that the attack upon the segregation statutes is unsubstantial.

of those statutes. It is not clear what the movants mean by the "primary issues." On the basis of the amended complaint, it is certainly not possible to conclude that the validity of the segregation statutes is a secondary matter. Significantly, the breach of the peace and disorderly conduct statutes are referred to but once in the complaint, and then only to show that other statutes, in addition to the segregation statutes, form the "color of law" under which the defendants engage in a policy, practice, custom and usage of segregation. The segregation statutes, on the other hand, are mentioned several times. And, as a commentator has noted, "the very nature of the claim cognizable by a three-judge court precludes it, almost by definition, from being treated as anything but the dominant claim." Kurland, The Romero Case and Some Problems of Federal Jurisdiction, 73 Harv. L. Rev. 817, 839(1960).

It is difficult, in fact, to separate the claim urged against enforcement of the segregation statutes from the claim urged against the policy, practice, custom, and usage of segregation. These claims are so inter-related that they can properly be said to constitute a single cause of action, albeit with two or more grounds for relief. A realistically broad concept of "cause of action" has been adopted by the Supreme Court. In Hurn v. Oursler, 289 U.S. 238 (1933) the plaintiff sued for an injunction, damages, and an accounting, alleging, inter alia, (1) that the defendant had infringed the plaintiff's copyrighted play, and (2) that the defendant's acts constituted unfair competition. Only the copyright infringement claim was a ground for federal jurisdiction. The issue was whether jurisdiction over the federal ground also

conferred jurisdiction over the related but nonfederal ground. Answering affirmatively, the Court said (289 U.S. at 246):

The distinction to be observed is between a case where two distinct grounds in support of a single cause of action are alleged, one only of which presents a federal question, and a case where two separate and distinct causes of action are alleged, one only of which is federal in character. In the former, where the federal question averred is not plainly wanting in substance, the federal court, even though the federal ground be not established, may nevertheless retain and dispose of the case upon the non-federal ground; in the latter it may not do so upon the non-federal cause of action.

The case at bar falls within the first category. The bill alleges the violation of a single right, namely, the right to protection of the copyrighted play. And it is this violation which constitutes the cause of action.

See also, Armstrong Paint & Varnish Works v. Nu-Enamel Corporation, 305 U.S. 315 (1938).

Although a " 'cause of action' may mean one thing for one purpose and something different for another," United States v. Memphis Cotton Oil Co., 288 U.S. 62 (1933); Hurn v. Oursler, supra, and although the Hurn v. Oursler concept of "cause of action" was developed for the purpose of determining the bounds between state and federal jurisdiction, we believe it is properly applied^{4/} here. Here, as in Hurn v. Oursler, the two claims are interrelated and allege violation of the same right -- the right of the plaintiffs under the Commerce Clause, the Fourteenth Amendment, and the Interstate Commerce Act to

^{4/} A pragmatic concept of "cause of action" has even greater justification here, where the issue is not one of federal jurisdiction but merely of the capacity in which the federal court shall sit. Cf. Romero v. International Term. Co., 358 U.S. 354, 380-81 (1959).

use interstate and intrastate transportation facilities free from state action which discriminates against them because of their race or color. Violations of this right constitute a single "cause of action," for "[a] cause of action [in the Hurn v. Oursler sense] does not consist of facts, but of the unlawful violation of a right which the facts show. The number and variety of the facts alleged do not establish more than one cause of action so long as their result, whether they be considered severally or in combination, is the violation of but one right by a single legal wrong." Hurn v. Oursler, supra, at 246, quoting from Baltimore S.S. Co. v. Phillips, 274 U.S. 316, 321 (1927^{5/}). The claim urged against the enforcement of the segregation statutes is an inseparable part of the larger claim urged against the policy, practice, custom, and usage of segregation. Important common issues are presented by both claims. It would appear that the evidence introduced in support of each claim will be overlapping^{6/}.

It is clear that, at least where a single "cause of action" is involved, the "jurisdiction" of the three-judge court, once acquired, "extends to every question involved, whether of state or federal law, and enables the court to rest its judgment on the decision of such of

^{5/} See also American Fire & Casualty Co. v. Finn, 341 U.S. 6, 12-14 (1951).

^{6/} "The King of Brobdingnag gave it for his opinion that, 'whoever could make two ears of corn, or two blades of grass to grow upon a spot of ground where only one grew before, would deserve better of mankind, and do more essential service to his country than the whole race of politicians put together.' In matters of justice, however, the benefactor is he who makes one lawsuit grow where two grew before." Chafee, Bills of Peace With Multiple Parties, 45 Harv. L. Rev. 1297 (1932).

the questions as in its opinion effectively dispose of the case." Sterling v. Constantin, 287 U.S. 378, 393-394 (1932) and cases cited; Florida Lime Growers v. Jacobsen, 362 U.S. 73 (1960); Railroad Commission v. Pacific Gas & Electric Co., 302 U.S. 388, 391 (1938); Davis v. Wallace, 257 U.S. 478, 482 (1922). In Sterling v. Constantin, supra, for example, the Governor of Texas proclaimed martial law over several oil producing counties in the State, and shut down the oil wells by military force. He then permitted a state commission to fix the limit of oil production. The operators brought suit to restrain the Governor from invading their property rights under the Fourteenth Amendment, alleging that state constitutional and statutory provisions, if construed to authorize the acts complained of, were unconstitutional. A three-judge district court, convened to hear the case, concluded that the challenged state constitutional provisions and statutes did not confer upon the Governor the power which he had assumed to exercise, and thus that he had acted without authority under Texas law. An injunction was issued, from which an appeal was taken to the Supreme Court. Using the language quoted supra, the Supreme Court sustained the district court's jurisdiction to issue the injunction. See also, Modern Woodmen of America v. Casados, 15 F. Supp. 483, 486 (D. N.M. 1936)..

Even if the two claims may not be said to constitute a single cause of action, a three-judge court would have jurisdiction over both because the disputed claim may properly be deemed ancillary to the dominant claim raised against enforcement of the segregation statutes. See The Chicago Junction Case, 264 U.S. 258,

269 (1924); cf. Oklahoma Gas & Elec. Co. v. Oklahoma Packing Co., 292 U.S. 386, 390 (1934); New York State Guernsey Breeders Co-op. v. Wallace, 28 F. Supp. 590, 593 (N.D. N.Y. 1939), aff'd on other grounds sub. nom. New York State Guernsey Breeders Co-op v. Wickard, 141 F. 2d 805 (C.A. 2, 1944). Compare Pittsburgh & W. Va. Ry. v. United States, 281 U.S. 479, 488 (1930); New York Cent. Sec. Corp. v. United States, 287 U.S. 12, 28-29 (1932), and Powell v. United States, 300 U.S. 276, 289, 290 (1937),

Thus in Evers v. Dwyer, 358 U.S. 202 (1958), the Supreme Court ordered a three-judge court to hear the merits of class action brought by a Negro resident of Memphis, Tennessee, seeking an injunction against enforcement of Tennessee statutes requiring segregation on transportation facilities or against "any other method of state-enforced segregation on Memphis transportation facilities."

In any event, cases holding that Rule 18(a) of the Federal Rules of Civil Procedure does not extend the jurisdiction of the federal courts^{7/}, and cases holding that a plaintiff may not join a cause of action over which the federal court has jurisdiction with a cause of action over which the court has no jurisdiction^{8/}, are inapposite.^{9/}

7/ E.g., Loew's Drive-In Theatres, 174 F. 2d 547, 549 (C.A. 1, 1949), cert. denied, 338 U.S. 822; Rule 82, F. R. Civ. Pro.

8/ See, e.g., Pearce v. Pennsylvania R. Co., 162 F. 2d 524, 527 (C.A. 3, 1947), cert. denied, 332 U.S. 765.

9/ It has been held, and Professor Moore agrees, that even where two distinct causes of action -- one cognizable by one judge and the other by three -- are contained in a complaint, joinder should be permitted. Atlantic Lumber Corp. v. Southern Pac. Co., 2 F.R.D. 313 (D. Ore. 1941); 3 Moore, Federal Practice, ¶18.07[2] (2d ed. 1948). Compare New York Guernsey Breeders Co-op v. Wallace, 28 F. Supp. 590 (N.D. N.Y. 1939), aff'd on other grounds sub. nom. New York State Guernsey Breeders Co-op v. Wickard, 141 F. 2d 805 (C.A. 2, 1944). The only real question involves the form of trial, and where there are two distinct causes
(continued)

9/ (Continued)

of action there should be no objection to presenting evidence with respect to both causes of action -- particularly where they involve common issues -- to the three-judge court. As suggested by Moore, the three judges and the single judge might then render separate judgments under Rule 54(b), F.R. Civ. Pro. (3 Moore, Federal Practice ¶18.07[2] (2d ed. 1948); see also the procedure followed by the district court for the Western District of Louisiana in Hannah v. Larche and Hannah v. Slawson, 363 U.S. 420, 428-430).

II

3. The City of Jackson and its Mayor, Commissioners and Chief of Police urge that the City cannot be named in this action. They rely upon Monroe v. Pape, 365 U.S. 167, 191 n. 50 (1961) and Egan v. City of Aurora, 5 L. Ed. 2d 741 (1961), as well as cases decided prior to Monroe v. Pape in the lower federal courts. 10/

The cases relied upon by these defendants are inapposite, for they each deal with the question of whether 42 U.S.C. 1983 authorizes a suit for damages against a municipality. In Monroe v. Pape, the Court noted that the Senate adopted an amendment to the original bill which would have made " ' the inhabitants of the county, city, or parish' " in which certain acts of violence occurred liable "to pay full compensation" to the person damaged or his widow or legal representative, but that this amendment was rejected by the House. 365 U.S. at 188. It was the congressional reluctance to impose liability in damages upon municipalities which induced the Court in Monroe v. Pape to hold that no damage action could be brought against a city under section 1983.

The propriety of equitable relief against a city was not in issue in Monroe v. Pape. Prior cases indicate that municipalities are properly named along with city

10/ Charlton v. City of Hialeah, 188 F. 2d 421, 423 (C.A. 5, 1951); Hewitt v. City of Jacksonville, 188 F. 2d 423, 424 (C.A. 5, 1951); Cobb v. City of Malden, 202 F. 2d 701, 703 (C.A. 1, 1953); Agnew v. City of Compton, 239 F. 2d 226, 230 (C.A. 9, 1957). See also Cuiksa v. City of Mansfield, 250 F. 2d 700, 703-704 (C.A. 6, 1957).

officials where violations of 42 U.S.C. 1983 are alleged and an injunction sought. E.g., Douglas v. City of Jeannette, 319 U.S. 157 (1943); Holmes v. City of Atlanta, 350 U.S. 879 (1955), affirming 223 F. 2d 93 (C.A. 5, 1955); Mayor and City Council of Baltimore City v. Dawson, 350 U.S. 877, affirming 220 F. 2d 386 (C.A. 4, 1955). In the Holmes case, the Court of Appeals for the Fifth Circuit affirmed a judgment which granted an injunction against the city, inter alia, restraining it from making any distinctions because of race or color in providing opportunities and facilities for playing golf on the city's golf courses.

Surely the Supreme Court did not intend to overturn this authority in footnote 50 of its opinion. That footnote says, in pertinent part:

* * * In a few cases in which equitable relief has been sought, a municipality has been named, along with city officials, as defendant where violations of 42 U.S.C. § 1983 were alleged. See, e.g., Douglas v. City of Jeannette, 319 U.S. 157; Holmes v. City of Atlanta, 350 U.S. 879. The question dealt with in our opinion was not raised in those cases, either by the parties or by the Court. Since we hold that a municipal corporation is not a "person" within the meaning of § 1983, no inference to the contrary can any longer be drawn from those cases.

We do not believe that the Court intended, in a footnote, to dispose of the issue, not raised in the case, of whether a municipality may be sued under section 1983 for equitable relief, and to overturn the Douglas, Holmes, and Dawson decisions (cf. Burt v. City of New York, 156 F. 2d 791 (C.A. 2, 1956) insofar as they relate to that question. In light of the Court's reasons for holding that an action for damages may not be maintained under section 1983, we think that its opinion should be taken to mean only that, for purposes of an action for damages, a municipality is not a "person" under that section.

More fundamentally, however, the plaintiffs' right of action against the city does not depend alone upon the provisions of section 1983. For here rights are asserted under the Constitution, which itself creates the cause of action for equitable relief and, within the meaning of 28 U.S.C. 1343 (3) (the jurisdictional provision upon which this suit is based) authorizes bringing of this suit. Cf. Bell v. Hood, 327 U.S. 678 (1946); Brewer v. Hoxie School District No. 46, 238 F. 2d 91, 103 (C.A. 8, 1956); Hart & Wechsler, The Federal Courts And The Federal System (1953) 794-797. Doctrines of immunity can have no application to suits in equity brought to restrain invasions of federal constitutional rights. Sterling v. Constantin, 287 U.S. 378, 393 (1932); Ex parte Young, 209 U.S. 155, 156 (1908); Graves v. Texas, 298 U.S. 393, 403-404 (1936); Georgia R. Co. v. Redwine, 342 U.S. 299, 305, n. 17 (1952).

III

Motions of defendant Patterson and of the City of Jackson, its Mayor, Commissioners, and Chief of Police assert that the plaintiffs should be remitted to the courts of the State of Mississippi for resolution of questions of state law which the movants say are involved in this action. The defendant Patterson terms these alleged questions of state law "intricate and involved"; the City of Jackson, et al., state that the alleged state questions are "unsettled."

Insofar as the challenged segregation statutes are concerned, no issues of state law are involved. Each of these statutes is attacked as being invalid on its face (Amended Complaint, para. 12). If the plaintiffs are correct in this challenge, the statutes cannot be saved through interpretation by the Mississippi courts. Mississippi's legislature has used unmistakably simple, clear, and mandatory language. With respect to the segregation statutes, therefore, abstention could not result in avoiding decision of the federal constitutional issues presented, and would therefore be improper. Toomer v. Witsell, 334 U.S. 385, 392, n. 15 (1948).

Similarly, no questions of state law are raised by the attack upon the alleged policy, practice, custom and usage of racial segregation under color of state law. For should the Mississippi state courts ultimately determine on state grounds that members of the class represented by the plaintiffs cannot properly be convicted of violating the breach of the peace and disorderly conduct statutes simply because they have attempted to desegregate the facilities here involved, the question presented in this action would still be unresolved. For here it is charged that state

officials "have pursued and are presently pursuing a policy, practice, custom and usage" of segregating Negro and white persons on common carriers and in terminals and terminal facilities used by common carriers in Mississippi (Amended Complaint, para. 15). The arrests are "merely tangible specific evidence of the application of the custom, practice, and usage complained of." Baldwin v. Morgan, 251 F. 2d 780, 787 (C.A. 5, 1958). Dismissal of the cases growing out of such arrests would not refute the allegations which complain of the custom, practice, and usage. Baldwin v. Morgan, ^{11/} supra.

As the Supreme Court has recently noted, moreover, the doctrine of abstention "is an extraordinary and narrow exception to the duty of a district court to adjudicate a controversy properly before it." County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 188 (1959). This statement is particularly apt with respect to controversies involving civil liberties and civil rights, where the abstention technique has rarely been applied. Compare Harrison v. N.A.A.C.P., 360 U.S. 167 (1960) with Lane v. Wilson, 307 U.S. 268 (1939); Schnell v. Davis, 336 U.S. 933 (1949), affirming 81 F. Supp. 872 (S.D. Ala. 1949); Nixon v.

11/ " * * * this city criminal case, or its dismissal, was not the Civil Rights case before the Court below. When the criminal proceeding was closed, it did not automatically take with it the charge made in this cause that state agencies, pretending to act for the state and exerting the power of their respective offices were, under the threat of arrest or other means, depriving Negroes of the right to be free of discrimination in railway public waiting rooms on account of race or color." Baldwin v. Morgan, 251 F. 2d at 787.

Herndon, 273 U.S. 536 (1927); Nixon v. Condon, 236 U.S. 73, 39 (1932); Smith v. Allwright, 321 U.S. 649 (1944); Terry v. Adams, 345 U.S. 461 (1953); Browder v. Gayle, 142 F. Supp. 707, 713 (M.D. Ala. 1956), affirmed, 352 U.S. 903; Mitchell v. Wright, 154 F. 2d 924, 926 (C.A. 5, 1946); Romero v. Weakley, 226 F. 2d 399 (C.A. 9, 1955); Brewer v. Hoxie School District No. 46, 238 F. 2d 91, 95 (C.A. 8, 1956); Aaron v. Tucker, 186 F. Supp. 913, 924 (E.D. Ark. 1960), reversed on other grounds sub nom. Norwood v. Tucker, 287 F. 2d 798 (C.A. 8, 1961); Stapleton v. Mitchell, 60 F. Supp. 51, 55 (D. Kan. 1945), appeal dismissed per stipulation sub nom. McElroy v. Mitchell, 326 U.S. 690 (1945); Wilson v. Beebe, 99 F. Supp. 418, 420 (D. Del., 1951); cf. Brown v. Board of Education, 347 U.S. 483 (1954); 1 Moore, Federal Practice (2d Ed., 1948) ¶0.203 [1] n. 27; see also West Virginia State Board of Education v. Barnette, 319 U.S. 624, 630-631, 639 (1943); Hague v. C.I.O., 307 U.S. 496 (1939); Grosjean v. American Press Co., 297 U.S. 233 (1936). In Browder v. Gayle, supra, where state statutes and city ordinances requiring racial segregation on motor buses were challenged on federal constitutional grounds, Judge Rives, speaking for a three-judge district court, set forth the guiding principle (142 F. Supp. at 713):

The defendants * * * insist that even if the Federal court has jurisdiction, it should, in its discretion as a court of equity, and for reasons of comity, decline to exercise such jurisdiction until the State courts have ruled on the construction and validity of the statutes and ordinances. The short answer is that the doctrine has no application where the plaintiffs complain that they are being deprived of constitutional civil rights, for the protection of which the Federal courts have a responsibility as heavy as that which rests on the State courts.

Similarly, in Morrison v. Davis, 252 F. 2d 102 (1958), cert. denied, 356 U.S. 968, the Court of Appeals for the Fifth Circuit upheld the issuance of an injunction against the application of Louisiana statutes requiring segregation of the races on buses, street cars, and trolley buses, stating (252 F. 2d at 103):

This is not such a case as requires the withholding of federal court action for reasons of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action. 42 U.S.C.A. § 1983. Whatever may be the rule as to other threatened prosecutions, the Supreme Court in a case presenting the identical factual issue affirmed the judgment of the trial court in the Browder case in which the same contention was advanced.

The United States is of the view, therefore, that this Court should not abstain, but should proceed to consider the merits of plaintiffs' suit.

Respectfully submitted,

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SEPTEMBER 1961.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Supplemental Brief for the United States as amicus curiae upon each of the parties to this action by mailing a copy thereof, air mail, this 31st day of August, 1961, to their attorneys as follows:

Honorable Peter M. Stockett, Jr., Special Assistant Attorney General of the State of Mississippi, Honorable Dugas Shands, Assistant Attorney General of the State of Mississippi, Honorable Edward L. Cates, Assistant Attorney General of the State of Mississippi, Attorneys for the Defendant, Joe T. Patterson, State Capitol, Jackson, Mississippi; Colin L. Stockdale, Esq., Attorney for Defendant, C.W. Carr, Barnett Building, Jackson, Mississippi; Sydney A. Smith, Jr., Esq., Attorney for Illinois Central Railroad Company, 918 Electric Building, Jackson, Mississippi; E.W. Stennett, Esq., City Attorney, City Hall, Jackson, Mississippi, J.A. Travis, Jr., Esq., Electric Building, Jackson, Mississippi, Robert G. Nichols, Jr., Esq., Lamar Life Building, Jackson, Mississippi, Thom H. Watkins, Esq., Watkins & Eager, Suite 800, Plaza Building, Jackson, Mississippi, Attorneys for the Defendants, The City of Jackson, Mississippi, Allen C. Thompson, Mayor, D.L. Luckey, Commissioner, Thomas B. Marshall, Commissioner, and W.D. Rayfield, Chief of Police; J. Will Young, Esq., Deposit Guaranty Bank Building, Box 1224, Jackson, Mississippi, Attorney for Jackson City Lines, Inc.; Junior O'Mara, Esq., and Robert C. Cannada, Esq., 700 Petroleum Building, Jackson, Mississippi, Attorneys for Continental Southern Lines, Inc.; Constance Baker Motley, Esq., and Thurgood Marshall, Esq., Attorneys for Plaintiffs, 10 Columbus Circle, New York 19, N. Y.; R. Jess Brown, Esq., 1105-1/2 Washington Street, Vicksburg, Mississippi, Attorney for Plaintiffs; Robert Cannada, Esq., and Junior O'Mara, Esq., 700 Petroleum Building, Jackson, Mississippi, Attorneys for Southern Greyhound Lines; and Rubel Phillips, Esq., Deposit Guaranty Bank Building, Jackson, Mississippi, Attorney for Jackson Municipal Airport Authority, Jackson, Mississippi.

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