UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

RICHARD B. SOBOL, et al., Plaintiffs	Civil Action
UNITED STATES OF AMERICA, Plaintiff-Intervenor	
v.	No. 67-243
LEANDER H. PEREZ, SR., et al., Defendants	Section E
STATE OF LOUISIANA, Defendant-Intervenor	(Three-Judge Court)
LOUISIANA STATE BAR ASSOCIATION, Defendant-Intervenor	
CRIMINAL COURTS BAR ASSOCIATION, Defendant-Intervenor	

PLAINTIFFS' POST-TRIAL BRIEF

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PLAINTIFFS' POST-TRIAL BRIEF

For the convenience of the Court, this post-trial brief is presented in the form of Proposed Findings of Fact and Conclusions of Law, together with certain explanatory and supporting material. Plaintiffs' legal submissions have already been fully developed in Plaintiffs' Pretrial Memorandum of Law, and since the evidence presented at the hearing fully supports the contentions made in that memorandum, we see no occasion to burden the Court with further extended doctrinal discussion.[1] The thrust of the present brief is therefore essentially factual.

Part I contains our proposed Findings of Fact. The findings we urge are set forth in the text. Where discussion of the underlying evidence seems necessary, we do this in footnote.

Part II contains our proposed Conclusions of Law. These are keyed to the Findings of Fact, on the one hand, and the legal discussion in Plaintiffs' Pretrial Memorandum of Law, on the other.

Part III contains our requests for relief and, in that connection, discusses certain legal points that arose at the hearing of the matter.

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[1] The only subsequent development requiring amendment of our legal submissions has been the intervention of the United States. The government's intervention, giving it the same rights to relief "as if it had instituted the action," 42 U. S. C. § 200h-2, provides an additional reason why 28 U. S. C. § 2283 does not foreclose the injunction by this Court of Plaintiff Sobol's pending prosecution. See Leiter Minerals, Inc. v. United States, 352 U. S. 220 (1957); United States v. Wood, 295 F. 2d 772 (5th Cir. 1961) (alternative ground).

I. PROPOSED FINDINGS OF FACT

A. The History, Structure, Nature and Operations of the Lawyers' Constitutional Defense Committee. /NOTE: This Part (A) is based entirely on uncontroverted evidence./

1. Background of the Involvement of the Lawyers' Constitutional Defense Committee /hereafter sometimes L. C. D. C. / in Louisiana.[2]

The partnership of Collins, Douglas and Elie is a firm of Negro attorneys practicing law in the City of New Orleans. (Tr. I, 57, 219.) Its three partners, Robert F. Collins, Nils R. Douglas and Lolis E. Elie, are licensed members of the Louisiana Bar. (Tr. I, 57, 218.)

In 1960, the firm /hereafter sometimes called C., D. & E./ began to represent individuals in civil rights cases.[3] (Tr. I, 61.) Since that year, Collins, Douglas and Elie have handled between 500 and 600 such cases, many involving more than a single client, and some involving hundreds of clients. (Tr. I, 63-64.) Exemplary of the cases are suits to desegregate the public schools, to compel a termination of racial discrimination in employment under Title VII of the Civil Rights Act of 1964, to desegregate public accommodations under Title II of that Act, and the defensive handling of criminal prosecutions arising out of civil rights demonstrations, marches, sit-ins and picketing activities, or criminal prosecutions thought to be maintained as a

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[2] The findings in this subsection are based on the testimony of Lolis Edward Elie, Esq., which is not contradicted in the record in any material regard. Mr. Elie's testimony is corroborated in substance by that of Robert F. Collins, Esq., at Tr. I, 225-230.

[3] The term "civil rights cases" is developed in subsection (D) (1) infra.

means of harassing persons engaged in civil rights activities of the sort. (Tr. I, 69-71.) C.D.&E. have represented clients in these cases in fifteen or twenty Louisiana parishes— including Orleans, Madison, Washington, Iberville, East and West Feliciana Parishes— (Tr. I, 69-71), and also have handled some similar cases in the State of Mississippi, in association with Mississippi counsel (Tr. I, 58-60, 148-149, 229). The firm is chief southern counsel for the Congress of Racial Equality (C.O.R.E.), and has represented other national and local civil rights organizations. (Tr. I, 61-63.) Although Collins, Douglas and Elie are engaged in the general practice of law (Tr. I, 92; II, 20), most of the large number of criminal misdemeanor cases[4] in which they have been involved have been civil rights matters, three of which went from the Louisiana state courts to the Supreme Court of the United States and resulted in significant constitutional rulings by that Court in favor of the civil rights claimants. (Tr. I, 144; Lombard v. Louisiana, 373 U.S. 267 (1963); Cox v. Louisiana, 379 U.S. 536, 559 (1965); Brown v. Louisiana, 383 U.S. 131 (1966).)

Civil rights litigation has consumed a considerable amount of the firm's time (Tr. I 77-78), but it has been essentially non-renumerative. As counsel for C.O.R.E., Collins, Douglas and Elie received a retainer of $250 per month in 1961; that was increased to $400 per month in 1962; and since 1963 it has been $400 per month plus $10 per hour for each hour over 40. (Tr. 68-69, 140-141.) However, C.O.R.E. and its successor organization are presently $3500 in arrears on this billing. (Tr. I, 69) And, apart from the C.O.R.E. retainer, C.D.&E. have never received a fee

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[4] Most criminal cases arising out of civil rights activities are misdemeanor prosecutions. See subsection (E)(4)(a) infra.

or other consideration from any client or organization in civil rights matters. (Tr. I. 69, 77, 132-133; V, 40-41.) C.D.&E. "do not make any money in Civil Rights." (Tr. I, 132). The handling of civil rights litigation generally, as one witness for the Louisiana State Bar Association put it, "is not a paying practice" (Johnnie A. Jones, Esq., at Tr. IX, 13); civil rights lawyers' groups, in the words of another witness who speaks with extraordinary authority in such matters, "don't make any money out of this, and this is sort of a service to the people" (A. P. Tureaud, Esq., at Tr. VI, 34).[5/]

Prior to the anticipated "freedom summer" of 1964, Collins, Douglas and Elie "expected and anticipated a great deal more in volume of Civil Rights cases" (Tr. I, 177), and therefore spoke to Carl Rachlin, General Counsel of C. O. R. E. about the possibility of meeting an increased need for legal assistance (Ibid.). A conference was held which set in motion the process of forming an organization— the Lawyers' Constitutional Defense Committee— to meet this need. (Tr. I, 177.) (See subsection (A)(2), infra.)

Immediately following the passage of the Civil Rights Act of 1964, C. D. &E. experienced a great increase in requests for legal representation in civil rights matters, and it became impossible for the firm to service all of them. (Tr. I, 79.) Since the inception of their civil rights practice four years earlier, C. D. &E. had been receiving assistance from out-of-state lawyers (Tr. I, 65), and also from two national civil rights organizations, C. O. R. E. and the N. A. A. C. P. Legal Defense Fund (Tr. I, 62, 80). Under the pressure of "dozens of calls, almost daily from

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5/ The generally non-remunerative character of civil rights law-practice is developed further in subsection (E)(4) (a) infra.

Negroes who were being denied service in formerly white places"— "a tremendous increase in volume in Civil Rights work"— (Tr. I, 79), the firm now contacted these latter two organizations "and told them that we needed help desperately" (Tr. I, 80). Past conversations with local white attorneys had convinced C. D. &E. that no help could be expected from that quarter.[6] They consequently proposed the establishment of a program that would bring volunteer attorneys from the northern states to the South for three-week periods during their summer vacations, to assist in the offices of the Negro "lawyers in the south, particularly in Mississippi and Alabama and Louisiana, who were handling large volumes of Civil Rights cases." (Tr. I 82; see Tr. I 80-81.) A series of meetings ensued, involving the major national civil rights organizations, and such a volunteer-lawyer program was inaugurated. (Tr. 81-83, 176-177.) Thus was born the Lawyers' Constitutional Defense Committee volunteer project. (Tr. I, 82-83.)

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[6] Lolis Elie spoke at this time to a number of white Louisiana attorneys who "said unequivocally that they were not going to get involved .... /T/he white attorneys were just not interested.... You couldn't get a white attorney to help, ... with /one/ exception." (Tr. I, 80.) Mr. Elie's belief that local white attorneys would not provide assistance was confirmed by "conversations with the white lawyers in New Orleans in which /he/ ... had the most confidence." (Tr. I, 180.) On cross-examination, much was made of the fact that Mr. Elie did not approach the officers of the Louisiana State Bar Association to formally request use of the facilities of that organization in attempts to get help from white Louisiana lawyers, nor did he circularize the membership of the Bar. (Tr. I, 179-181.) This is particularly ironic, in the face of the showing that the Bar Association refused the use of its addressograph plates and mailing facilities to the A. C. L. U. when that organization attempted, as late as October, 1967, to circularize the Bar for the purpose of inviting attorneys to volunteer to participate in civil rights and civil liberties cases. (Tr. V, 184-187, 201-204.) At the trial herein, the Executive Counsel of the Association, Mr. Thomas O. Collins, Jr., explained that such a request would be denied even today, pursuant to the Bar Association's policy of restricting use of its mailing equipment to matters such as State Bar Association business, local bar functions, etc. (Tr. VII, 227-230.) However valid the financial and other reasons supporting the policy, the point is that the policy exists and that it made the lists unavailable. In any event, Mr. Elie did not contact the Bar Association because he felt that it "was not in anywise sympathetic to equal rights for Negroes." (Tr. I 180-181.) The bases for this belief was further developed infra, Section E.

2. Organization of the Lawyers Constitutional Defense Committee.

The L. C. D. C. was organized as a non-profit corporation of the State of New York by a certificate of incorporation executed May 22, 1964, for the "exclusively charitable" purposes of "providing without cost and assisting in the obtaining of legal counsel to persons engaged in activities aimed at achieving the equal protection of law and other rights guaranteed by the Constitution of the United States and who are unable to obtain such counsel without assistance." (Certificate of Incorporation, Plaintiffs' Exhibit #6, ¶2.) These purposes are embodied in its bylaws. (Bylaws, Plaintiffs' Exhibit #10, Article II.) The original officers and directors of the corporation were all attorneys, and included representatives of all of the major national civil rights and civil liberties organizations.[7] These organizations cooperated in the formation of the L. C. D. C. (Tr. I, 195), with the aim of establishing an independent lawyers' committee for the defense of civil rights, unconnected with any other single civil rights group.[8] (Tr. I, 182, 194-195.)

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[7] President: Leo Pfeffer, General Counsel, American Jewish Congress; Vice-President: John M. Pratt, Counsel, Commission on Religion and Race, National Council of Churches; and Carl Rachlin, General Counsel, Congress of Racial Equality; Secretary: Melvin L. Wulf, Legal Director, American Civil Liberties Union; Treasurer: Edwin J. Lukas, National Affairs Director, American Jewish Committee; Directors: Robert L. Carter, General Counsel, N. A. A. C. P.; Rev. Robert F. Drinan, Dean, Boston College Law School; Jack Greenberg, Director-Counsel, N. A. A. C. P. Legal Defense Fund; Clarence B. Jones, Counsel to Dr. Martin Luther King; and Howard Moore, Jr., Counsel, Student Nonviolent Coordinating Committee. (Plaintiffs' Exhibit No. 11.) The exhibit also shows the present officers and directors, including most of the same individuals. All continue to be attorneys.

[8] This has remained the character of the L. C. D. C. (See Tr. V, 38-43; VI, 32, 34-35.)

The L. C. D. C. charter was approved by an order of the Supreme Court of New York, Appellate Division, on June 3, 1964, authorizing the Committee to function as a form of legal aid agency under N. Y. Penal Law § 280, subdiv. 5. (Plaintiffs' Exhibit #7.) [9] By a determination letter dated July 10, 1964, the Internal Revenue Service accorded the Committee tax-exempt status as a charitable organization. (Plaintiffs' Exhibit #8.) [10] In an opinion letter dated December 24, 1964, the Standing Committee on Professional Ethics of the American Bar Association approved L. C. D. C.'s proposed program as "clearly within the standards and practices of the American Bar Association." (Plaintiffs' Exhibit #12, Opinion No. 786, p. 2.) [11]

9/ L. C. D. C.'s certificate of incorporation was filed with the Secretary of State of the State of New York on June 10, 1964. (Plaintiffs' Exhibit #6.) On July 1, 1965, the name of the corporation was changed to the Lawyers' Constitutional Defense Committee of the American Civil Liberties Union (Plaintiffs' Exhibit #10, Amendments to Bylaws dated July 11, 1967), and a certificate of change of name was duly filed with the Secretary of State on October 18, 1965 (Plaintiffs' Exhibit #6.)

10/ L. C. D. C.'s tax-exempt status has continued under its new organizational name (Note 9, supra). (See Plaintiffs' Exhibit #9.)

11/ After the commencement of the present litigation, counsel for the defendants also solicited an opinion from an A. B. A. committee, based on defendants' version of the facts deemed relevant. (Defendants' Exhibit #7.) Since this solicitation was addressed to the Standing Committee on Unauthorized Practice of Law, instead of the Standing Committee on Professional Ethics, the reply (Defendants' Exhibit #8) fails to discredit Plaintiffs' #12. It may be noted that, in Defendants' #8, the Unauthorized Practice of Law Committee declines to express any definitive opinion upon the present case, even on the basis of the highly slanted and misleading version of the facts stated by defense counsel in Defendants' #7. (Apart from evident, affirmative misstatements in Defendants' #7, the omission should be noted of any mention of the subject matter of the Duncan litigation, its background and the issues presented, and its uncompensated character.)

3. Early History of the Lawyers' Constitutional Defense Committee: The Volunteer Program, 1964.

The L. C. D. C. became operational shortly following its incorporation, servicing the Southern States with volunteer attorneys from the North during the summer of 1964. (Tr. I, 83-87.) In that first summer, it had no staff counsel but worked exclusively by the provision of volunteers who served for periods of three or four weeks in the offices of Southern Negro lawyers. (Tr. I, 83, 86.) The firm of C. D. &E. in New Orleans had about thirty such volunteers in 1964. (Tr. I, 85.)

Collins, Douglas and Elie were in charge of these volunteers. (Tr. I, 85.) Responsible for the State of Louisiana and for Southern Mississippi, the three Louisiana attorneys determined what cases would be handled, and they dispatched the volunteer lawyers wherever needed. (Tr. I, 83, 85-87.) The volunteers appeared in state and federal courts in Louisiana and Mississippi, without complaints from anyone. (Tr. I, 85-86.) They were always associated with Collins, Douglas and Elie, but often appeared in court physically alone. (Tr. I, 86.) Collins, Douglas and Elie would accompany them to the state courts in Louisiana whenever possible; but this could not be done on the frequent occasions when the firm had to make simultaneous appearances in four or five courts throughout the State. (Tr. II, 94-95.) On these occasions, it was the practice for the Louisiana attorneys to give their out-of-state associates letters of introduction stating the association for purposes of L. S. A. - R. S. § 37:214. (Tr. I, 86; II, 94-94.) When one of the Louisiana-licensed partners could appear, he would introduce the

out-of-state volunteer orally (Tr. II, 30-31); at times,[12] a written motion for leave to associate would be filed (Tr. I, 192-193). During this summer of 1964, prior to the Supreme Court's decision in City of Greenwood v. Peacock, 384 U. S. 808 (1966), much of the work of the volunteers involved removal cases (Tr. I, 85; II, 93); as a result, they were frequently in federal court (Tr. I,262); and the practice was to move their admission generally to the bar of this court, on the basis of their memberships in the bars of the federal courts of their home states (Tr., I, 262-263). However, even in the hey-day of removal, the volunteers made a substantial number of state-court appearances in association with Collins, Douglas and Elie. (Tr., II, 93.)

Throughout L. C. D. C. 's volunteer program, in 1964 and successive years, the volunteers were given specialized training by means of legal conferences on civil rights law (Tr. IV, 111-112, 137), and were briefed intensively on particular civil rights problems and local law by the local Negro attorneys with whom they were associated (Tr. IV, 136-137.) It was L. C. D. C. 's practice, in each Southern State, to have the volunteers work in association with locally-licensed Negro lawyers, who acted as attorneys of record in all cases handled by L. C. D. C. volunteers, and introduced the volunteers in court where necessary. (Plaintiffs' Exhibit #15, p. 2, ¶7; Plaintiffs' Exhibit #16, p. 2, ¶7.) Some of the volunteers would rent homes and bring their families to the Southern States where they were stationed; others would not. (Tr. I, 154).

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[12] As in the case of Douglas v. Gallinghouse, Defendants' Exhibit Elie #1.

4. The Emergence of L. C. D. C. Staff Counsel.

At the end of the summer of 1964, a problem developed. Cases involving hundreds of clients had been undertaken with the assistance of out-of-state counsel. Now, with the close of the usual vacation season, the volunteers were leaving. (Tr. I, 84.) These out-of-state attorneys generally expressed willingness to return to Louisiana when additional help was needed on the matters they had handled, and some of them did return. (Tr. I, 88-89.) But their relative unavailability left Collins, Douglas and Elie short-handed, and Mr. Elie expressed concern to the Executive Director of the L. C. D. C. (Tr. I, 84.)

Mr. Elie's suggestion was that, in place of the short-term volunteers, L. C. D. C. "get one or two people who could come down for a longer period of time." (Tr. I, 84.) It was considered whether, if paid by L. C. D. C., Collins, Douglas and Elie themselves could take on this added work[13]; and it was decided that they could not. It was also considered whether a white Louisiana attorney could be found for the job[14]; and it was concluded that one could not. As a result, the decision was made to bring a northern lawyer to Louisiana on a full-time basis. (Tr. I, 84-85, 87.)

13/ L. C. D. C. has never paid Collins, Douglas and Elie in any fashion. (Tr. V, 40-41.)

14/ In addition to his earlier conversation with local white attorneys, see note 6, supra, Mr. Elie discussed with John P. Nelson, Esq. the feasibility of employing a white Louisiana lawyer. (Tr. I, 84-85.) Mr. Nelson was one of the very few white lawyers who had previously been willing to assist with civil rights matters, such as the Tulane desegregation case, which he handled. (Tr. I, 80; II, 194.) He himself had found it impossible to secure the aid of other white Louisiana attorneys in that case (Tr. III, 27, 50), and he had been unsuccessful in other efforts to involve local white lawyers in civil rights cases. (Tr. II, 203-205; III, 5-9, 46, 61-62). At the time of the trial in the present case, it remained Mr. Nelson's view that it would have been impossible to get a Louisiana attorney to accept a staff position with the L. C. D. C. in late 1964. (Tr. II, 202.)

This decision was at first implemented by having a graduate law student, Harris David, come to the Collins, Douglas and Elie office as a coordinator, to organize and administer the civil rights caseload. Harris David arrived in the Fall of 1964. (Tr. I, 87.) He remained in New Orleans for two years as an L. C. D. C. employee, working in the C. D. &E. office. (Tr. I, 88.) After his admission to the New Jersey bar (Tr. I, 88), he was associated with Collins, Douglas and Elie in various litigations (Tr. I, 261; II, 23-24; Defendants' Exhibit Elie #1). He was admitted to the bar of this Court, but not to the Louisiana State Bar. (Tr. I, 88.)

Early in 1965, the L. C. D. C. opened an office in Jackson, Mississippi, under the direction of Alvin J. Bronstein, Esq., as Chief Staff Counsel. (Tr. I, 89.) Mr. Bronstein assumed general supervisory responsibility over Harris David's work for L. C. D. C., and himself became associated with Collins, Douglas and Elie in numerous matters in the state and federal courts in Louisiana. (Tr. I, 90-92.) Since the opening of the Jackson office, L. C. D. C. has continued to employ staff counsel. Indeed, although the volunteer program continued in subsequent years (Tr. I, 88-89; IV, 127), L. C. D. C. has placed increasing emphasis upon the staff lawyer, working together with Northern-based volunteer attorneys who have continuing responsiblities for particular litigations. (Tr. IV, 24-26.)

This tendency has been occasioned by several circumstances in addition to the unsatisfactory experience, first felt at the end of the summer of 1964, resulting from the seasonal variation in availability of short-term volunteers. First, there has been a change in the nature of the civil rights problems underlying L. C. D. C.

litigation: fewer mass arrests of civil rights workers and demonstrators, of the sort that required single-shot appearances in criminal court; and more of the protracted, complex litigation that characterizes, for example, school-desegregation and employment-discrimination cases. (Tr. I, 101; V, 24-29.) The latter sort of work requires continuity of personnel, to assure "continuous handling" (Tr. V, 25).[15] Second, it was felt "not fair to the courts, in complex, continuing litigation, to bring in different faces every few weeks." (Tr. V, 25.) As one instance, Judge Jones of the City Court in Bogalusa expressed displeasure at seeing streams of different volunteer attorneys appear for successive stages of cases in his court; with the result that Judge Jones and Nils Douglas "agreed that /L. C. D. C./... would not send any volunteers into the City Court in Bogalusa and that /Plaintiff Richard Sobol/ ... would be the only out of state counsel to make an appearance in his court and /Sobol's/... appearance would be accepted in these Civil Rights cases, alone, in association with Collins, Douglas and Elie." (Tr. V, 44; See Tr. IV 131-134, 211-212.)

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[15] This point was dramatically underscored by the evidence herein relating to the hospital desegregation case maintained in this Court under the Style of Payton v. Washington-St. Tammany Parish Charity Hospital, E. D. La., C.A. No. 15,658. The case was first adverted to by Defendant-Intervenors Dowling et al. /Criminal Court Bar Association/ as an example of a civil rights matter handled by white Louisiana lawyers, Victor LeBeau, Esq., and John P. Dowling, Esq., (Tr. I, 186; II, 70.) As the evidence developed, it appeared that those attorneys had indeed secured the entry of an injunctive decree by this Court desegregating the hospital, but had then declined to follow the matter up by taking steps to enforce the decree in the face of non-compliance. (Tr. I, 186-187; II, 90-92; Plaintiffs' Exhibits #23-25.) Mr. Dowling explained the failure to follow the matter up by stating that "our purpose in the case was to effect the desegregation, and I was simply a volunteer..." (Tr. II, 91, emphasis added.) (It should be noted that Mr. Dowling, in later testimony, intimated that post-decree investigations had been carried on in the Peyton case (Tr. IX, 57), but this is inconsistent both with his own declaration that he felt no obligation "to be a continuous policeman" (Tr. II, 91), and by the clear terms of Mr. LeBeau's letter of July 29, 1966 to an L. C. D. C. attorney, declining to associate Plaintiff Richard Sobol in the case for the purpose of seeking additional relief (Plaintiffs' Exhibit #25): "when judgment was rendered on this case, I considered this matter closed."

5. The Structure and Operations of the Lawyers' Constitutional Defense Committee.

Since the emergence of the position of staff counsel early in 1965, the general structure and operations of the L. C. D. C. have remained relatively constant. The following subparagraphs describe the organization during this period, and today.

a. Organizational Structure.

The L. C. D. C. is a New York non-profit corporation, organized as indicated in paragraph (A)(2) supra. It has an office and an Executive Secretary in New York City, and its Board of Directors meet there. The Board is composed exclusively of attorneys, most of them experienced civil rights lawyers. The Board has no responsibility for the decision to take particular cases or for the handling of them, and is not consulted on such matters. Neither, of course, is the Executive Secretary, a non-lawyer, whose functions are administrative. The handling of individual cases is the sole responsibility of the L. C. D. C. staff counsel, in conjunction with the local southern attorneys with whom they are associated. (Tr. IV, 124-125, 151; V 14-15; Plaintiffs' Exhibit #11, note 7 supra.)

L. C. D. C. has from time to time maintained operating offices in Selma, and Montgomery, Alabama; Jackson, Mississippi; and New Orleans, Monroe and Shreveport, Louisiana. (Plaintiffs' Exhibits #15-22.)[16/] From 1965 until November,

16/ The Shreveport office was opened late in 1964, in association with a Louisiana-licensed Negro attorney, Jesse Stone, Esq. (Tr. I, 89, 91.) The Monroe office was administered from Shreveport. (Plaintiffs' Exhibit #16, p. 2, ¶6.) This latter office was the subject of a complaint to the Louisiana State Bar Association by the Monroe City Attorney's office, which reported the presence of two out-of-state lawyers in Monroe. (Government Exhibit #29.) After investigation, the Unauthorized Practice of Law Committee of the Bar Association took no action. (Tr. VII, 223-225; VIII, 86-90). The investigation was the occasion of the letter, commented upon in the testimony at trial herein, by Mr. Thomas O. Collins, Jr., Executive Counsel of the Bar Association, to Mr. Edward F. Glusman, Chairman of the UPL Committee, advising to "let well enough alone. After all who wants the business these" yankees "will be handling? In addition, you jump on them and Washington is going to back them up with publicity which will cause their number to multiply." (Letter of June 29, 1965, Government Exhibit #29.)

1967, the Jackson office was designated the L. C. D. C. 's "Southern Office" and was the base of operations of its Chief Staff Counsel, Alvin J. Bronstein. (Tr. I, 100-101.) During this period, there was continuously maintained a New Orleans office, so designated, staffed originally by Mr. Harris David (see supra), and later by the Plaintiff Richard B. Sobol. These attorneys worked in close association with the Collins, Douglas and Elie firm, under the general supervision of Mr. Bronstein. (Tr. I, 89-91; IV 116, 123-124.) On November, 1967, Mr. Bronstein left the employment of L. C. D. C., and Plaintiff Sobol succeeded him as Chief Staff Counsel. (Tr. IV, 143-144.) L. C. D. C. presently maintains its New Orleans office (now designated the "Southern Office"), housing Mr. Sobol and two Louisiana-licensed staff attorneys; and its Jackson office (now so designated), housing two staff attorneys one of whom is and one of whom is not licensed to practice in Mississippi (Tr. IV, 143-144; V, 70-71) There is not now open an Alabama office, but there are plans to reopen one prior to the summer of 1968. (Tr. 144.) As Chief Staff Counsel, Mr. Alvin Bronstein was, and Plaintiff Richard Sobol is now, the chief legal officer of the L. C. D. C., responsible for all of its legal matters and for supervision of all litigation by L. C. D. C. staff attorneys and volunteers. (Tr. IV, 143-144, 151; V, 14-15.)

b. Personnel

During the past four years, L. C. D. C. has, from time to time, had fourteen staff counsel, all but three of them attorneys from northern and western states. The three remaining staff attorneys have been one Floridian, who served for sixteen months in Mississippi, and two Louisiana lawyers, Donald Juneau and Robert Roberts, now employed in the office in New Orleans. Messrs. Juneau and Roberts are the only persons ever retained as staff attorneys by L. C. D. C. who had not previously been volunteers. (Plaintiffs' Exhibit #13.) Mr. Juneau has been employed since February 15, 1967; Mr. Roberts, only more recently. (Tr. IV, 228.) Mr. Juneau has been out of law school for a year; Mr. Roberts for six months. (Tr. IV, 196-197; V. 96.) Both are white attorneys, licensed in Louisiana, and full-time L. C. D. C. employees. (Tr. II, 10-11; V, 79, 98.) Mr. Sobol strenuously and successfully urged the L. C. D. C. Board to appropriate funds to retain these men when he became aware of their availability, because he was "very anxious to encourage Louisiana lawyers to participate in this area" of civil rights practice. (Tr. IV, 193-194; See Tr. V, 99.)

L. C. D. C. has had a continuing policy of accepting as volunteers any attorney willing to help, without geographic discrimination. (Tr. I, 178.) Nevertheless, its volunteer attorneys have come virtually exclusively from the North and West. Of 117 volunteers who served in five Southern states in 1964 and early 1965, all but one— a Coast Guard officer from Virginia— were northern

or western lawyers. (Plaintiffs' Exhibit #14.)[17] Of 71 volunteers in the summer of 1965, all but two show northern and western addresses. One of the two is the same Virginia Coast Guardsman, and the other is an associate of Floyd McKissick, a Negro attorney in Durham, North Carolina, now Executive Director of C. O. R. E. Forty-eight volunteers during the summer of 1966, seventeen during the winter of 1966-1967, and sixteen during the summer of 1967, were all northerners or westerners. (Plaintiffs' Exhibit #14.)

c. Interstate Operation.

The L. C. D. C. has always functioned as an interstate operation, organized along lines dictated by the internal demands of effective legal servicing, rather than along the lines of state boundaries. At the beginning of its operations, the Collins, Douglas and Elie firm supervised volunteer attorneys who serviced Louisiana and Southern Mississippi. (Tr. I, 83, 85-86.) After the establishment of the Jackson, Mississippi office and the location there of Mr. Bronstein as Chief Staff Counsel, major civil rights matters in Louisiana, such as the extensive litigation arising out of Bogalusa in 1965 and 1966,[18] were handled directly by him, in association with Collins, Douglas and Elie. (Tr. I, 89-93; III 103-104, 114, 133.) (See the

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[17] The other 1964 volunteer listed as having a southern address, Henry M. Aronson, was at the time of listing a staff attorney for the N. A. A. C. P. Legal Defense Fund in Jackson, Mississippi. His home state is listed on Plaintiffs' Exhibit #13 as Connecticut.

[18] See subsection (A) (5) (d) (1) infra.

dockets of Louisiana and Alabama cases managed directly by the Jackson office in Plaintiffs' Exhibit #18, pp. 13-14, and Plaintiffs' Exhibit #20, pp. 20-21.) L. C. D. C. lawyers from the Jackson office handled the first major civil rights incidents in Tallulah, Louisiana, in 1965 (Tr. III, 164, 165); and thereafter they maintained continuing liaison with the civil rights leaders in that community, both clients and attorneys traveling frequently back and forth between Jackson and Tallulah (Tr. III, 169).

As staff attorney in New Orleans, Plaintiff Richard Sobol was responsible for all Fifth Circuit matters coming out of Alabama, as well as Louisiana. In connection particularly with emergency matters to be presented to the Court of Appeals, he was required to go to Alabama and consult there with L. C. D. C. 's Alabama staff lawyer. (Tr. IV 125-126.) For a time, his New Orleans office was responsible for Mississippi Gulf Coast matters, while the Jackson office handled Northern Louisiana. (Tr. IV, 126.) This arrangement was subsequently terminated for routine business, but interstate servicing of emergencies continues. (Ibid.)

As Chief Staff Counsel, Mr. Bronstein in Jackson was in charge generally of the L. C. D. C. office in Shreveport, and of the work of Harris David and, later, Richard Sobol, in New Orleans. (Tr. I, 89-92; IV, 116, 123-124.) When Mr. Sobol became Chief Staff Counsel, he assumed supervisory responsibility for the L. C. D. C. staff and volunteer attorneys in these states. (Tr. IV, 143-144.) Like his predecessor, he handles major matters arising in any of the states; for example, he spent most

of the month of December, 1967, in Mississippi in connection with three important Mississippi election cases. (Tr. IV, 145-147.) Because his present position requires him to handle litigation in Alabama and Mississippi, Mr. Sobol could not effectively do his job as L. C. D. C. Chief Staff Counsel if he were restricted to practice in the State of Louisiana alone. (Tr. IV, 147, 151.)

d. Nature and Volume of L. C. D. C. Litigation.

Although L. C. D. C. has also maintained a volunteer lawyers' program in Saint Augustine and Tallahasse, Florida, furnished legal services through Atlanta for civil rights cases arising in Georgia and the Carolinas, and even assumed some coordinating responsibility for providing legal representation in the aftermath of Watts and mass arrests in several northern cities,[19] its principal operation has consisted of the maintenance of offices in three states— Alabama, Louisiana, and Mississippi— for the handling of civil rights litigation and the representation of individuals and groups engaged in civil rights activities. The several L. C. D. C. Dockets admitted as Plaintiffs' Exhibits #17-22 reflect the nature and the enormous volume of the services provided by these offices. They include the defense of criminal prosecutions against Negroes and civil rights workers arrested while picketing, marching, demonstrating, organizing voter registration drives, strikes and boycotts, and testing places of public accommodation and public facilities for racial discrimination. They include the defense of civil actions and criminal prosecutions assertedly brought to harass and intimidate

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19/ See Plaintiffs' Exhibit #19, p. 1.

these same persons on account of their involvement in civil rights. They include affirmative actions to desegregate schools, hospitals, municipal facilities and establishments covered by Title II of the Civil Rights Act of 1964; actions challenging employment discrimination under Title VII; injunctive actions to void unconstitutionally repressive statutes and ordinances that inhibit peaceful civil rights demonstrations and organizational activities; damage actions under the federal civil rights jurisdiction to redress and discourage police brutality against demonstrators; suits against racially discriminatory voting statutes and practices (including reapportionment cases) and against patterns and instances of racial discrimination in jury selection and other aspects of criminal law administration. They also include the organization and legal counseling of Negro voter registration groups, cooperatives and community-action projects; and advising these groups on their rights and opportunities under such federal or mingled state-and-federal programs as the Agricultural Stabilization and Conservation Service, Veterans' Administration, Small Business Administration, Social Security, Welfare, and Economic Opportunity Act.

Since Plaintiff Sobol's coming to Louisiana in August, 1966 [20] as staff counsel, the L. C. D. C. office in New Orleans has maintained fifty-six or fifty-seven cases in the Federal District Courts. (Tr. IV, 129, 174.) Thirty-five or forty are pending and active at this time. (Tr. IV, 174.) Many are class actions or involve numerous clients, such as the school desegregation and mass-arrest cases. (Tr. IV, 175.) Mr. Sobol is handling sixteen school-

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[20] See Subsection (B) (2) infra.

desegregation cases in all, requiring considerable time to keep enforcement of the desegregation plans current. He has numerous employment-discrimination cases, comprising a score of pending EEOC complaints and two major Title VII litigations in court, including the leading Crown Zellerbach case (Hicks v. Crown Zellerbach Corp., E.D. La., C.A. No. 16,638). He has several damage actions under 42 U.S.C. §1983 challenging police brutality against participants in civil rights activities. He has pending suits to declare unconstitutional restrictive ordinances regulating parades, marches and other forms of demonstrational activity. A major Voting Rights Act case, Brown v. Post, W.D. La., C.A. No. 12,471, recently resulted in the vacation of school board elections in Madison Parish. (Order of January 24, 1968.) Another federal suit, Scott v. Davis, W.D. La., C.A. No. 12,502-M, challenges the administration of justice against civil rights workers in the Mayor's Court of Ferriday. A third, Blackman v. Louisiana, E.D. La., C.A. No. 66-587, seeks to restrain the discriminatory enforcement of Louisiana's compulsory school attendance law in Claiborne and Plaquemines Parishes. (Temporary restraining order issued November 2, 1966.) There have also been a number of Title II cases, including the leading bowling-alley case (Adams v. Fazzio Real Estate Co., Inc., E.D. La., C.A. No. 67-467, Opinion and Order, May 10, 1967); a successful attack on the Louisiana miscegenation statute (Zippert v. Sylvester, W.D. La., C.A. No. 12,733, Judgment August 9, 1967); and other federal litigations. (Tr. IV, 123, 127-131.)

In addition, there is considerable state-court litigation. This includes such miscellaneous matters as a civil libel action by municipal authorities in Bogalusa against civil rights leaders in that city (Tr. IV, 131), and proceedings arising out of the raid of a predominantly Negro consumer's cooperative office by the District Attorney of Lafayette Parish (Tr. IV, 73-76, 129). The latter case is an instance where there were "concurrent matters pending in both the Federal and the State Courts." (Tr. V,50-51.) Other examples of litigation involving phases in both federal and state tribunals are removal cases, a number of which L. C. D. C. still maintains under Rachel (Tr. IV, 130), and federal habeas corpus proceedings on behalf of persons under state criminal convictions arising out of civil rights activity (Tr. IV, 131). An instance of a somewhat different sort is the Grambling College litigation, in which federal judicial relief was sought first to compel, and later to challenge the consequences of, a state administrative hearing in connection with the expulsion of students from that state-supported Negro school. (See Tr. V, 61-67.)

The most important sort of case, numerically, that L. C. D. C. has handled in the Louisiana state courts has been misdemeanor prosecutions maintained against participants in civil rights activities or under circumstances where the prosecution may have an intimidating effect upon such activities. These cases were a considerable part of the work of L. C. D. C. at its inception (I, 85-87; II, 94-95; V, 24-25), and L. C. D. C. volunteers made a substantial number of appearances in the state courts— city courts, mayor's courts, justice's courts and district courts—

even prior to the virtual demise of civil rights removal under the Peacock decision of the Supreme Court. (Tr. II, 93; IV, 131.) Peacock increased the necessity for such state-court appearances in defense of civil rights participants charged with criminal offenses (Tr. I, 193, 199; Tr. II, 93), with the result that L. C. D. C. attorneys, both volunteers (Tr. IV, 127) and staff counsel (Tr. IV, 131, 189-191, 214-215) have had many occasions to appear in the state criminal courts.[21] Mr. Sobol has appeared in association with Collins, Douglas and Elie in the Sixth Judicial District Court (including Madison Parish), both accompanied by andunaccompanied by the members of the firm. He has also appeared on a number of occasions in the City Court of Bogalusa, where he was permitted to practice without the presence of his associated local counsel, by virtue of an arrangement between Mr. Nils Douglas and Judge Jones of that court. (Tr., IV, 131-134, 211-212; V, 43-45.)

As was noted above,[22] with the passage of time since 1964 the major emphasis of L. C. D. C.'s active litigation efforts has shifted from the defense of criminal actions (mass arrests, the asserted "harassment" prosecutions, etc.) in the state courts to affirmative lawsuits seeking the judicial vindication of civil rights, often brought in federal court. (Tr. I, 101; V, 24-29.) However, the former class

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[21] Actually, even prior to Peacock, L. C. D. C. had cut down on its removal practice. See Plaintiffs' Exhibit #22, p. 10: "During the last few months of 1965 and the first ten months of 1966, we have attempted to defend criminal actions in the state courts to a greater extent than previously. Rather than removing to the Federal courts every case which involves a constitutional issue, we are attempting to sustain constitutional rights in the state court where they must ultimately be guaranteed in order to maintain our federal system of justice."

[22] See subsection (A) (4) supra.

of case still preponderates on L. C. D. C. 's docket (Tr. IV, 28); the C. D. &E. and L. C. D. C. offices presently have pending criminal prosecutions against more than 300 defendants. (Tr. I, 175.) Moreover, L. C. D. C. staff attorneys consider the defensive litigation their "first obligation" (Tr. V, 28), for the following reasons as expressed by Mr. Sobol:

> "...[T]hose [criminal] matters take precedence insofar as we feel that unless the people engaging in Civil Rights Activities are out of prison rather than in prison, nothing else is going to go on and I would like also to add, although I can't document this, we do feel that persons around the State and the south who would otherwise seek to prosecute persons active in Civil Rights on charges of disorderly conduct or marching without a permit or loitering, are a good deal less inclined to do so in view of the knowledge that now these people are going to be defended and defended vigorously. It is not going to be a simple matter to put the President of the Madison Parish Voters League in prison as it may have been a few years ago. We think that knowledge has discouraged that kind of prosecution. But, there is some going on and we do give it precedence." (Tr. V, 28-29; see also Tr. V, 103.)

In any event, it is impractical to conceive of Mr. Sobol's practice as subject to neat compartmentalization into packages of "affirmative" and "defensive," "federal" and "state" litigations. It is the nature of his work to be confronted with situations, rather than pre-defined lawsuits; and he is required to select and combine "affirmative" and "defensive," "federal" and "state" legal resources for the most effective vindication of his clients' rights and interests. (Tr. IV, 130.)[23] In Mr. Sobol's own judgment as

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[23] "What I am saying is that a good number of cases, a good number of fact situations that are presented to use where there have not been cases in the area, and one of the things that we try to do is to fashion lawsuits which are sound, legally cognizable lawsuits that can be successfully maintained to remedy a Civil Rights problem that exists.

an attorney, he could not properly do his job as Chief Staff Counsel for the L. C. D. C. if his practice were restricted to "affirmative" and other suits in the Federal courts (Tr. I, 152), and on this record it is impossible to dispute the validity of that judgment.[24] (See Tr. I, 193, 199; II, 93.)

L. C. D. C.'s major litigation work in Louisiana has been in the following Parishes: Claiborne, Concordia, Jackson, Lafayette, Madison, Ouachita, Washington and Webster. (Tr. IV, 174.) These Parishes are widely scattered across the State. (Government Exhibit #22.) Detailed testimony was received with regard to the nature of that litigation, and its supportive effects upon the civil rights activities of clients, in three of the Parishes.

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[24] As L. C. D. C. staff counsel, Plaintiff Richard Sobol also engages in extensive legal work other than lawsuits for his civil rights clients. He has consulted with and advised civil rights groups in the community on ways of achieving their legal rights without litigation. He has prepared information on Louisiana election procedures to assist potential Negro candidates in qualifying without procedural mishaps, hence avoiding litigation. (Tr. IV, 141; V, 35.) In connection with one civil rights protest march from Bogalusa to Baton Rouge, he and Mr. Bronstein effectively negotiated for the marchers with public officials, requesting police protection which was thereafter furnished. (Tr. III, 112-113, 143-145; V, 35.) Following the march, which was the subject of some published comment by Governor McKeithen, Mr. Sobol successfully requested that Louisiana television stations accord equal time for Bogalusa civil rights leaders to reply to the Governor, under the FCC's "fairness" doctrine. (Tr. V, 35-38.) In addition, Mr. Sobol has recently undertaken, at the request of the Educational Testing Service, a series of lectures to Negro college students, designed to encourage them to enter the legal profession.

(i) Washington Parish.

Early in 1965, Negroes engaged in civil rights activity in Bogalusa and particularly members of the Bogalusa Voters League, a Negro voter registration group also concerned with school desegregation, equal employment opportunities and the end of racial discrimination in public facilities and accommodations (Tr. III, 96-98), were subjected to widespread acts of terrorism by white persons thought to be influenced by the Klan. The Voters League responded by protest demonstrations, marches and picketing. (Ibid.) These, in turn, were broken up by the police under color of local prohibitory ordinances, and the civil rights groups were brutally repressed both by the police and by private violence which the police ignored. At that point, James Farmer, National Director of C. O. R. E., brought Alvin Bronstein of the L. C. D. C. to Bogalusa and introduced him to A. Z. Young, President of the Voters League. L. C. D. C. undertook to represent Young and his compatriots, in association with Collins, Douglas and Elie. Mr. Bronstein brought a federal injunctive action and obtained an order both enjoining police brutality and requiring that the police furnish the civil rights demonstrators adequate protection. Hicks v. Knight, E.D. La., C.A. No. 15,727 (Order of July 10, 1965). The injunction was violated, and L. C. D. C. instituted and maintained a successful contempt prosecution of the responsible officials. (Order of July 30, 1965.) When Bogalusa officials again terrorized the Negro community with dogs, beatings and mass arrests on "Bloody Wednesday," October 20, 1965,

L. C. D. C. prosecuted a second contempt proceeding, which was heard and taken under advisement by this court.[25] Thereafter, the terrorism and repression stopped. In addition, L. C. D. C. brought a second injunction proceeding, Hicks v. Cutrer, E. D. La., C. A. No. 15,672, which resulted in the immediate repeal of an unconstitutional anti-congregation ordinance, and a third action, Hicks v. Cutrer, E. D. La., C. A. No. 66-225, in which another Bogalusa ordinance was invalidated and its enforcement enjoined. (Order of August 30, 1967.) The result of these legal actions was to free the Negro citizens of Bogalusa from both the actuality and fear of intimidation and brutality in the exercise of their federal constitutional and statutory rights. (Tr. I, 92-93; III, 103-110.)[26]

Thereafter, L. C. D. C. attorneys handled successful school desegregation suits against the City of Bogalusa School Board (Jenkins v. City of Bogalusa School Board, E. D. La., C. A. No. 15,798, Order for Desegregation, August 12, 1965; Supplemental and Amended Order, August 15, 1966; Supplemental Relief against persons interfering with the operation of the order, October 11, 1966; Supplemental Order, July 31, 1967; Motion for Order of Civil Contempt, October 9, 1967; Supplemental Order relating to faculty desegregation, January 19, 1968)

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[25] L. C. D. C. attorneys, on behalf of the Voters' League, also contacted the federal authorities who initiated the Government prosecutions. (Tr. III, 152.)

[26] Prior to the injunction action, Collins, Douglas and Elie, with the assistance of L. C. D. C.'s Harris David, had been representing arrested demonstrators in the state courts, and were overwhelmed by the weight of the prosecutions. (Tr. I, 92-93, III, 101, 111-112, 126, 139-142.)

and against the Washington Parish School Board (Moses v. Washington Parish School Board, E.D. La., C.A. No. 15,973, Order for Desegregation October 13, 1965; Supplemental and Amended Order, October 1967). (Tr. III, 108-109.) The Washington Parish School Board case resulted in a major opinion in the law of school desegregation, 276 F. Supp. 834. L. C. D. C. attorneys undertook two major Title VII actions to compel Crown-Zellerbach, Bogalusa's principal employer, to terminate racially discriminatory employment practices (Tr. 110-111, 115). Hicks v. Crown Zellerbach Corp., E.D. La., C.A. No. 16,638; Hill v. Crown Zellerbach Corp., E.D. La., C.A. No. 67-286. Mr. A. Z. Young, the president of the Bogalusa Voters League and a Crown Zellerbach employee, is a plaintiff in one of the latter actions. When Mr. Young led a State-wide Negro protest march from Bogalusa to Baton Rouge in the Summer of 1967, to demonstrate against employment discrimination in Louisiana, he again encountered threatened violence. He called upon L. C. D. C.; Mr. Bronstein and Mr. Sobol came to the scene; they spoke to the police and other officials requesting adequate protection for the marchers; and such protection was furnished. (Tr. III, 112-113, 143-145; V, 35.) Subsequently, Mr. Sobol successfully demanded equal time on Louisiana television stations, under federal communications law, so that the civil rights leaders in Bogalusa might answer certain published statements of Governor McKeithen concerning the protest march. (Tr. V, 35-38.)

So serious and incessant have been the problems of the Negroes seeking civil rights in Bogalusa, that on occasion L. C. D. C. has been required to assign an

attorney virtually full-time to that city. (Tr. III, 114-115.) The determination of Judge Jones of the Bogalusa City Court to permit Mr. Sobol to appear before him in numbers of cases, as an associate of Collins, Douglas and Elie, but without the necessity of case-by-case introduction by them responded, as noted above,[27] to the Judge's dissatisfaction with numerous appearances by a changing corps of L. C. D. C. lawyers. (Tr. V, 43-45.) In addition to specific litigation, L. C. D. C. attorneys have frequently gone to Bogalusa to consult with the civil rights leaders there concerning community racial problems, and these leaders have traveled to the L. C. D. C. offices for similar consultations. (Tr. III, 113.) In summary, Mr. A. Z. Young's expression of his "drastic need" for the services of Richard Sobol and of the L. C. D. C. is credible, to the effect that the civil rights movement in Bogalusa "might as well hang up our glove" if deprived of the support of legal representation by the L. C. D. C. (Tr. III, 119.)

ii. Madison Parish.

L. C. D. C. lawyers made their first appearance in Madison Parish in 1965. When a large number of Negroes were arrested and jailed for attempting to desegregate a cafe, their friends phoned the C. O. R. E. office in New Orleans, and C. O. R. E. called L. C. D. C. Attorneys from the Jackson L. C. D. C. office then came to Tallulah, and successfully obtained release of the prisoners and dropping of the charges in city court. (Tr. III, 164, 187-189.) On this occasion, they met Mr. Zelma Wyche, President of the Madison Voters' League, a civil rights group engaged in voter registration, political education, and the desegregation of schools and public accommodations. (Tr. III, 156-158.)

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[27] See p. 12, supra.

L. C. D. C. attorneys, and particularly Plaintiff Richard Sobol, have subsequently represented Mr. Wyche in numerous criminal and civil matters arising out of his civil rights activities. A volunteer lawyer from Philadelphia, Pa. defended Mr. Wyche in his prosecution for simple assault in a state court in Tallulah. (Tr. III, 165, 180-181, 184.)[28] Although associated with Collins, Douglas and Elie, the volunteer attorney appeared alone in court on that occasion. (Tr. III, 181.) Another volunteer appeared alone, unaccompanied by local counsel, and secured Mr. Wyche's acquittal on a charge of inciting to riot in the Sixth Judicial District Court for Madison Parish. (Tr. III, 191-193.) A third L. C. D. C. volunteer appeared alone to represent Mr. Wyche on a weapons charge. (Tr. III, 191-193.) Messrs. Bronstein and Sobol have defended Mr. Wyche on charges both of burglary and of the assault arising out of efforts to desegregate a truck stop. (Tr. III, 162-163.) The burglary charge was successfully removed to federal court. Wyche v. Louisiana, 5th Cir. No. 24,165, Opinion of October 26, 1967. Mr. Wyche was convicted in the state courts on the assault charge, and is now at large on bail pending the disposition of federal habeas corpus proceedings attacking that conviction. Wyche v. Hester, W. D. La., No. 12,429. Opinion of August 30, 1967, pending on appeal as 5th Cir. Misc. No. 854.

L. C. D. C. attorneys also assisted Mr. Wyche in filing charges against white persons who physically intimidated him and other Negroes involved in civil rights activities. (Tr. III, 165, 166.) They appeared for him to defend state-court

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[28] In the third from last line of Tr. III, 180, "civil assault" should read "simple assault."

injunctive proceedings brought to restrain picketing in protest of conditions at a Negro school. (Tr. III, 166-167.) In a major action in the Federal District Court for the Western District of Louisiana, Mr. Sobol, on behalf of Mr. Wyche and other Negro citizens of Madison Parish, secured the invalidation under the Voting Rights Act of 1965 of the Madison Parish school board elections. (Tr. III, 167-168; IV, 129; Brown v. Post, W.D. La., C.A. No. 12,471, Opinion and Order of January 24, 1968.) L. C. D. C. lawyers have subsequently filed suit to challenge an election in which Mr. Wyche himself was defeated for the office of police chief. Wyche v. Post, W.D. La., C.A. No. 13,574, filed February 23, 1968.

In addition to these matters, L. C. D. C. attorneys have handled numerous other civil rights cases in Madison Parish. (Tr. III, 165-168.) They have come from both the Jackson and New Orleans offices to consult with civil rights leaders in Tallulah, and Mr. Wyche has traveled to both L. C. D. C. offices for further consultations. (Tr. III, 169.) Again, Mr. Wyche's own appraisal of the work of L. C. D. C. services to the work of civil rights groups in Madison Parish is credible: without the legal assistance of L. C. D. C., "it would be just about the end of it." (Tr. III, 175.)

iii. Lafayette Parish.

The Southern Consumers' Cooperative and the Southern Cooperative Development Program are two predominantly Negro projects engaged in community action work and the economic organization of low-income citizens, principally Negroes. The organizations have engaged in voter registration and voter education activity as well. (Tr. IV, 68-71.) In April, 1967, the common offices of these organizations in Lafayette Parish were raided by the District Attorney, who seized records of both groups. Suit was instituted in the Federal District Court by Mr. Sobol. He took the case to the Fifth Circuit, where a temporary restraining order against the seizure was issued, Southern Consumers Education Foundation v. De Blanc, 5th Cir., No. 24,680, Order of April 21, 1967. The District Attorney then consented to restrictions on his investigation that fully protected the operations and privacy of Southern Consumers. W.D. La., C.A. No. 12,842, Consent Judgment of May 8, 1967. (Tr. IV, 73-76.) L.C.D.C. thus successfully resisted what the cooperative groups saw as a campaign to cripple their activities. (Tr. IV, 76-77.)

e. Financial aspects of L.C.D.C. litigation.

L.C.D.C. is an entirely charitable organization. It is supported by contributions from foundations and individuals. (Tr. V, 14, 21-22.) It does not receive money from the local civil rights organizations whom it serves. (Tr. V, 22-23.) Neither L.C.D.C. nor its staff attorneys ever receives a fee from a client. (Tr. IV, 140; V, 111) All of the litigations described above were uncompensated.

(E.G., Tr. III, 114-115, 197.) Indeed, L. C. D. C. funds were expended to cover the substantial out-of-pocket costs incurred in the cases, amounting to $4000 and $7000, respectively, in two litigations described in testimony. (Tr. IV, 138-139.)

It is also the case that Collins, Douglas and Elie do not receive fees in matters in which they are associated with L. C. D. C. attorneys. (Tr. I, 69, 77, 133.) L. C. D. C. itself pays them no fees or consideration of any sort. (Tr. V, 40-41.) In the course of their general practice, in non-civil-rights cases, they of course accept fee-generating cases. But there has only been one instance in which L. C. D. C. staff counsel have referred a paying case to Collins, Douglas and Elie; in this instance, an old client of Mr. Elie's asked Mr. Sobol about legal representation, and he sent the client back to C. D. &E. (Tr. I, 131-132; IV, 219-220.)[29/]

L. C. D. C. staff lawyers are salaried on a per annum bases. (Tr. IV, 114-115, 144-145, 206-207; V, 95-96.) Volunteer attorneys are merely reimbursed for their travel and expenses. (Plaintiffs' Exhibit #15.)

It is not an absolute prerequisite to representation by L. C. D. C. that a client who needs legal counsel in a civil rights matter be indigent. However, in fact, most clients serviced by the L. C. D. C. are indigent. And even those who are not indigent in the sense of destitute, cannot ordinarily afford to pay for the kind of costly litigation which L. C. D. C. maintains for them. (Tr. IV, 140-141, 213-214.)

29/ Of course, in this case, no part of the fee received by Mr. Elie was shared with Mr. Sobol. (Tr. I, 132.)

B. The Plaintiff, Richard B. Sobol. /NOTE: This Part (B) is based entirely on uncontroverted evidence./

Plaintiff Richard B. Sobol is presently Chief Staff Counsel of the Lawyers Constitutional Defense Committee. It is his prosecution for the unauthorized practice of law, arising from his representation of Plaintiff Gary Duncan on a simple battery charge in the Twenty-Fifth Judicial District Court, Plaquemines Parish, Louisiana, that is the occasion of the present lawsuit. This Part B describes Mr. Sobol and his work in Louisiana. Part C infra describes the Duncan litigation, and his role in it.

1. Background and Training.

Mr. Sobol is an honor graduate of the Columbia Law School in New York City.[30] As an officer of the Columbia Law Review, he did considerable specialized study in the fields of constitutional and criminal law (Tr. IV, 107-109); and, while a student, he was a research assistant to Professor Herbert Wechsler in the professor's work as Reporter for the Model Penal Code. (Tr. IV, 109.) Upon graduation, he worked briefly for a New York law firm and then served as a law clerk to a United States Circuit Judge of the Court of Appeals for the Second

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[30] At Columbia, he was a James Kent Scholar, a designation reserved for the top five students in the class. (Tr. IV, 106-107).

Circuit. (Tr. IV, 109-110.) He thereafter moved to Washington, D. C., where he was Special Assistant to a Federal Trade Commissioner before joining the Washington law firm of Arnold & Porter. (Tr. IV, 110.) He remained in active association with that firm for three years and three months, during which time he concentrated on litigation work for the firm and handled some civil liberties cases for it. (Tr. IV, 110-111, 188.) With the firm's permission, he also served as one of the attorneys for the Washington chapter of CORE, and as the Chairman of the Police Practices Committee of the Washington affiliate of the ACLU. (Tr. IV, 111.) In the latter capacities, he did considerable consultative work and litigation in civil rights and civil liberties matters, and tried numerous misdemeanor cases--assault, disturbing-the-peace cases, etc.--in the District of Columbia (Tr. IV, 111, 186-188.) Since his graduation from law school, Mr. Sobol has done considerable reading in the fields of constitutional and criminal law, attempting to keep abreast of those developing fields. (Tr. 111-112.) He also attended several conferences for the training of lawyers in civil rights law, presented by the N.A.A.C.P. Legal Defense Fund and the L.C.D.C. (Tr. IV, 111-112.) To date, he has continued his readings in the specialties of criminal and constitutional law, and has had occasion in his work to meet and confer with leading experts in those fields. (Tr. IV, 112.) He is a member of the bars of the State of New York, of the District of Columbia, of the Supreme Court of the United States, of the

United States Court of Appeals for the Fifth Circuit, and of the United States District Court for the Eastern District of Louisiana. (Tr. IV, 106.) He is not admitted to the Louisiana State Bar.

2. Work with and Employment by the L.C.D.C.

During the summer of 1965, Mr. Sobol was a volunteer lawyer for the L.C.D.C. He spent three weeks in the New Orleans office of Collins, Douglas & Elie, doing the usual work of L.C.D.C. volunteers, including the handling of criminal cases in the Bogalusa City Court. (Tr. I, 99; IV, 113.) 31/

On August 1, 1966, he took a leave of absence from the Arnold & Porter firm and came to New Orleans as a staff attorney of the L.C.D.C. (Tr. I, 100; IV, 114). At the time he left Arnold & Porter, he was earning $24,000 a year at the firm. (Tr. IV, 114.) His salary with the L.C.D.C. was $9,500. (Tr. IV, 114-115.) Mr. Sobol's salary remained at $9,500 until November, 1967, when he became Chief Staff Counsel for the L.C.D.C., at a figure of $15,000 per annum, his present salary. (Tr. IV, 144-145, 206-207.) Evidence in this record makes it plain that Mr. Sobol's income would have increased significantly above $24,000 had he remained with the Arnold & Porter firm during the same period. (Tr. IV, 115-116.) The conclusion is inescapable that Mr. Sobol, who has a wife and two children (Tr. IV, 115), is in Louisiana at a "tremendous financial sacrifice", as one of his associates put it. (Tr. II, 12.)

31/ He was uncompensated, as are all L.C.D.C. volunteers. (Tr. IV, 114.)

During the year and a half that he has spent in Louisiana as L.C.D.C. staff counsel, Mr. Sobol has practiced nothing but civil rights law. (Tr. II, 20.) He has personally handled or supervised, in association with Collins, Douglas and Elie, most of the litigation described in subsection (A) (5) (d) supra. His work has been as described therein.

3. Relations with Collins, Douglas & Elie.

Mr. Sobol has never handled any legal matter in Louisiana except in association with local counsel. He associates in every L.C.D.C. case with Collins, Douglas & Elie, and sometimes with other Louisiana-licensed attorneys as well. (Tr. IV, 127.) The nature of the association with the Collins, Douglas & Elie firm is particularly intimate; Mr. Elie expressed it by saying that "I felt and still feel like I am part and parcel of the Lawyers Constitutional Defense Committee." (Tr. I, 155.) Mr. Sobol's appreciation of the relationship is that "I am associated in the practice of law with Collins, Douglas & Elie, not, of course, in the general practice of law, but in a narrow field." (Tr. IV, 218.) All cases on the L.C.D.C. docket are considered Collins, Douglas & Elie cases as well; and in working on them, Mr. Sobol

> "was responsible to /Collins, Douglas & Elie/ ... in that they were their cases, and we worked on them and consulted about each step of the way in the case, in the office." (Tr. IV, 124; see also Tr. 136-137.)

For the first year and a half of its operation in Louisiana the L.C.D.C. worked exclusively out of the Collins, Douglas &

Elie office. Thereafter, it was decided to rent additional space, and L.C.D.C. took quarters in the same building with C, D & E. (Tr. I, 141.) The L.C.D.C. office was on the ground floor, at 2209 Dryades Street; C, D & E. was upstairs in the same building, with a mail address of 2211 Dryades. (Tr. I, 141, 260.) Both offices shared a common phone number, although each had its separate extensions, and the Collins, Douglas & Elie office also had another number. (Tr. I, 142, 260.) Subsequently, C, D & E moved to larger and more centrally located offices at 344 Camp Street. Because L.C.D.C. could not afford the rents in that building, it relocated its office at the corner of Camp and Common Streets, a block and a half from C, D & E. (Tr. II, 10.)

There is separate L.C.D.C. and C, D & E stationery, but Mr. Sobol has a supply of the C, D & E letterhead and is authorized to use it in matters in which he is associated with Collins, Douglas and Elie. (Tr. I, 142-143, 193-194; II, 11; IV, 217-218; V, 70.) This arrangement has been made because Mr. Sobol is "associated with them in all of /his/ ... cases" in Louisiana. (Tr. IV, 217.) Collins, Douglas and Elie appear on all the pleadings and documents filed in any state court matter by Mr. Sobol; and generally, probably invariably, one of the partners personally signs every such document. (Tr. V, 45-47, 67-69) 32/

32/ The last pages cited refer to the Duncan case, discussed in detail below: In this matter, Mr. Sobol, as a member of the bar of the Supreme Court of the United States, signed papers at the Supreme Court stage of the litigation. The only document signed by him prior to that stage was a bill of exceptions, to which Mr. Sobol affixed his signature in open Court, at the express direction of Judge Leon. (Tr. V, 67-69.)

Mr. Sobol never talks to a new client except when asked to do so by Collins, Douglas and Elie. Decisions to take on matters are made in the first instance by the members or a member of the firm, in consultation with Mr. Sobol. (Tr. IV, 220; e.g., II, 3-4; IV, 152-153; V, 56-57.) When L.C.D.C. had a ground-floor office, persons sometimes wandered in asking where were the lawyers, and Mr. Sobol on these occasions always directed them to the C, D & E office upstairs. (Tr. IV, 220.) 33/ Since the present L.C.D.C. office is on an upper floor of a building, prospective clients no longer wander in. (Ibid.)

4. Relations with clients.

Although the decision to take on a particular case as an L.C.D.C. case is made because its issues or context present a significant civil rights aspect, (Tr. IV, 232) 34/ once a case is undertaken "the policies of L.C.D.C. is the interests of the client. We all do exactly what the client wants." (Tr. IV, 192.) "We think of ourselves as having a very personal relationship with our clients, and our goal is, in a criminal context, to get them acquitted without compromising what are often their principles." (Tr. IV, 232.) Mr. Sobol explained that, in civil rights matters, it is more than ordinarily frequent to find

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33/ The L.C.D.C. Dryades Street office had posted a 3x5 inch card reading "Lawyers Constitutional Defense Committee". Mr. Sobol's name was not posted anywhere about the building. (Tr. IV, 221.

34/ See subsection (D) (1), infra.

"principled clients", who perceive their own interests as identified with the goals and purposes of the civil rights movement, and that these principles, like the other wishes of the client, are respected by the L.C.D.C. lawyers. (Tr IV 232-233.) But, consistently with these "unusual client-attorney relationships" where they are found, "what we want to do [in a criminal matter] is to get our guy acquitted, and we raise anything and everything we can to achieve that result, and with some success." (Tr IV, 232.)[35]

Four of Mr. Sobol's clients testified at the trial herein, and their testimony exemplified in dramatic fashion the intensity of their trust and confidence in him as their lawyer. Gary Duncan, for whose defense Mr. Sobol is being prosecuted, testified that if he were arrested next week in another case involving a controversy with a white person, he would want Mr. Sobol to represent him. (Tr. III, 207.) He is aware that Mr. Sobol is being prosecuted for practicing law without a license in Louisiana, but nevertheless would want to go to him "for advice and about going to see for a lawyer." (Ibid.) Father Albert McKnight, on whose behalf Mr. Sobol handled the Southern Consumers' case, supra, explained:

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[35] Acquittal, is, of course, only one manner in which a client's interest may be served in a criminal matter. The evidence makes clear that, like other criminal lawyers, the L.C.D.C. attorneys are appropriately concerned with the sentencing disposition where, in their judgment, that is the client's most important interest. (See Tr. IV, 190-191; V, 78; IX, 98.) Mr. Sobol summarized the matter simply: "We just try to win the case." (Tr. IV 233.)

> "[I]t is generally acknowledged that in Louisiana, L.C.D.C. is about the only civil rights lawyers who will handle -- well, controversial cases, that I know of, and that the ones that I have spoken with in our area know of, I am not saying that it is the only one, but that it is the only one that we know of." (Tr. IV, 79.)

If he were to have another controversial case next week, Father McKnight would want Mr. Sobol to represent him. (Tr. IV, 80.) He plainly has unique confidence in Mr. Sobol. (Tr. IV, 88-89, 93.)

Similarly, Mr. Zelma Wyche, whose frequent representation by Mr. Sobol and L.C.D.C. attorneys was described above, would want the L.C.D.C. to represent him if he were arrested again next week. (Tr. III, 176.) "[I]f Dick Sobol was really found guilty and the L.C.D.C. lawyers were restricted from practicing law in Louisiana, ... the Negroes of Louisiana who were trying to secure equal rights would be in a bad fix." (Tr III, 175.) And Mr. A. Z. Young of Bogalusa testified with evident conviction that if Mr. Sobol were unavailable to represent him, he felt that he would be railroaded and sent to Angola forthwith. (Tr. III, 119-120, 145-149, 153-154.) He held to his conviction under lengthy cross-examination: "I am still saying that Richard Sobol was responsible for me and a whole lot of other Negroes not being dead and in hell or in Angola." (Tr. III, 146.) Whatever the validity of fears of this nature, they testify eloquently to Mr. Sobol's clients' confidence and faith in him.

5. Residence in Louisiana.

The terms of the Louisiana statute, L.S.A.- R.S. 37: 214 permitting out-of-state attorneys who are "temporarily present" in the State to practice here in association with locally-licensed counsel makes relevant an inquiry into the nature of Mr. Sobol's residence in New Orleans. This subsection summarizes the evidence on that issue.

When Mr. Sobol first came to Louisiana in August, 1965, as a volunteer attorney for L.C.D.C., he remained for approximately three weeks and then returned to Washington D. C. and the Arnold & Porter firm. (Tr IV. 113-114.) Thereafter, Collins, Douglas & Elie asked Mr. Sobol to come to Louisiana permanently as a member of their firm, and he visited the city to discuss that possibility with them. (Tr. I, 99-100.) Because Mr. Sobol decided that he did not want to locate permanently in Louisiana, he declined the opportunity to join Collins, Douglas & Elie. (Tr. II, 11-12.) Rather, in accepting the position as an L.C.D.C. staff attorney, he went on leave from Arnold & Porter, with which firm he remained and remains associated. (Tr. II, 11-12; IV, 114.) His precise status with Arnold & Porter is a leave of absence: "I am expected back when I leave here, and I am welcome back when I leave here." (Tr. IV, 114.) 36/ Mr. Sobol has always maintained a mailing address at Arnold & Porter. (Tr. IV, 122, 197-198.)

36/ See note 39, infra.

On August 1, 1966, Mr. Sobol began his work as an L.C.D.C. staff attorney in New Orleans. (Tr. IV, 114.) That August, he moved with his wife and two children to this city, where the family rented an apartment -- half of a duplex -- in which they have since lived. (Tr. IV, 201-202, 210.) The Sobols' six-year-old daughter was enrolled in a school in New Orleans. (Tr. IV, 201.)

In 1966, Mr. Sobol filed a Louisiana non-resident income tax return. (Defendants' Exhibit #3.) His automobile remained registered, and is still validly registered, in the District of Columbia. (Tr. IV, 202; Plaintiffs' Exhibit #31.) Mrs. Sobol's automobile operator's license is one issued in the District; Mr. Sobol's District license expired and he took a Louisiana permit. (Tr. IV, 203; Plaintiffs' Exhibit #32.) Mr. Sobol has a personal checking account in Washington, D. C., and none in Louisiana. (Tr. IV, 122.) [37] The Sobol family maintains credit cards with addresses in both locations, with the preponderate number being in Washington. [38] They maintain a good deal of personal property in the District of Columbia, and Mr. Sobol has continued to keep his life insurance policies and some shares of funds registered to him in the District. (Tr. IV, 122.)

37/ He is authorized to sign checks on an L.C.D.C. office account in New Orleans. (Tr. IV, 122-123.)

38/ Tr. IV, 121-122, 203-206 Plaintiffs' Exhibit #30. There are 11 credit cards in all: three for local Washington enterprises, bearing a Washington address for Mr. or Mrs. Sobol; three national or non-local cards, bearing a Washington address; three national cards bearing no address (billings on two of which have been transferred to New Orleans); one card for a local New Orleans enterprise, with no address for Mr. Sobol as L.C.D.C. attorney in New Orleans.

While living in New Orleans, Mr. Sobol has traveled to Alabama and Mississippi on L.C.D.C. business, spending almost the whole of the month of December, 1967 in the latter state. (Tr. IV, 125-126, 145-147.) He has returned to Washington on business and, with his wife, on vacation. (Tr. IV, 202-203.) Mr. Sobol originally planned to leave L.C.D.C. and New Orleans in the Fall of 1967, but when Mr. Bronstein announced his own plans to terminate his service with the Lawyers Constitutional Defense Committee, Mr. Sobol decided to stay on for an additional year, as L.C.D.C. Chief Staff Counsel, in order to maintain continuity in the L.C.D.C. operation. (Tr. IV, 207-208.) Mr. Sobol's plans, as of the time of trial herein, were to leave Louisiana about Labor Day, 1968, and return to Arnold & Porter, in Washington. (Tr. IV, 208-209.) [39/]

[39/] We wish to inform the Court that since the date of trial Mr. Sobol has accepted an appointment to the faculty of the Law School at the University of Michigan. This will not substantially affect the date of termination of his employment by L.C.D.C., but will mean that when he departs New Orleans he will be going to Ann Arbor, Michigan, rather than back to Washington, D.C.

C. The Duncan Case.

1. Duncan's Retaining of Collins, Douglas and Sobol as his Attorneys. /NOTE: This Part (C)(1) is based entirely on uncontroverted evidence./

Plaintiff Gary Duncan, a nineteen year-old Negro resident of Plaquemines Parish (Tr. III, 198), was arrested in October, 1966, in connection with an alleged altercation with a white boy in the Parish. (Tr. III, 198.) Duncan and his parents decided not to attempt to get him a lawyer in Plaquemines, because they were of the opinion that all such lawyers "were going to do for /Gary/. . . was to plead guilty. . ." (Tr. III, 201.) Consequently, Gary's parents came to New Orleans where they appeared in the L.C.D.C. office, saying that they had been sent to the L.C.D.C. by some federal official -- the F.B.I. or the Department of Justice -- whom they had previously consulted. (Tr. IV, 152; see Tr. I, 158, 256; II, 3; IV, 221-223.)[40] Mr. Sobol told them that the L.C.D.C. could not take a case until a member of the Collins, Douglas & Elie firm had talked with Gary; and he made an appointment for Gary and the witnesses to meet with himself and Robert Collins. (Tr. IV, 152-153; see also Tr. I, 231-232; III, 200-201, 213; IV, 223.)

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[40] Because of the nature of its work, the L.C.D.C. is required to maintain some liaison with federal officials whose duties include the protection of persons in civil rights matters. See Plaintiffs' Exhibit #15, p. 6, para. 18; Plaintiffs' Exhibit # 16, p. 4, para. 18.

Prior to this meeting, Mr. Sobol and the three partners of the Collins, Douglas & Elie firm discussed the question whether they should accept the Duncan case if it turned out to be the sort of matter that Gary's parents had described. They were all quite apprehensive about taking on a case in Plaquemines Parish, because of the reputation of Plaquemines in civil rights matters.[41] However, for the reasons described in subsection (D)(2) infra, they decided that Collins and Douglas,[42] together with Sobol, would handle the matter if it was what it appeared to be. (Tr. I, 102-103, 105, 231, 242; IV, 153; V, 74-75.) Thereafter, pursuant to the appointment made by the Duncan parents, Gary came to New Orleans, met with Mr. Sobol and Mr. Collins, discussed the case with them; and it was at this time that they agreed with Gary Duncan to represent him. (Tr. I, 231-232; II, 3-4; III, 200-201, 213; IV, 152-153, 223.)

2. History of Events in the Case Leading Up to the Charges Against Mr. Sobol.

The initial charge against Gary Duncan was Cruelty to Juveniles, L.S.A.-R.S. §14:93, an offense triable in

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41/ See subsection (G)(3) infra.

42/ Apart from his participation in this decision that the Duncan case would be handled by the office, Mr. Elie took no part in the representation of Duncan. (Tr. I, 102.) He was at that time an Assistant District Attorney in Orleans Parish. (Tr. I, 58, 130-131.) See note 47, infra.

juvenile court. (Tr. I 231-232.) Mr. Collins prepared two pleadings in this juvenile matter, a motion to quash based on both state and federal constitutional grounds, and a motion for a bill of particulars. These documents were subscribed by the typed names of Robert F. Collins, Nils R. Douglas and Richard B. Sobol, and were signed by Mr. Collins. (Tr. I, 233, 235-236; IV, 154-155; Plaintiffs' Exhibit #34 [File in State v. Gary Duncan, 25th Judicial District Court, No. 14434], Motion to Quash; Application for a Bill of Particulars.)

Prior to retaining Collins, Douglas and Sobol, Gary Duncan had been arraigned without counsel and pleaded not guilty. (Plaintiffs' Exhibit #34, Minute Entry, November 2, 1966.) His trial in the juvenile court was set for November 21, 1966. (Ibid.) On that date, Mr. Collins and Mr. Sobol went to the courthouse of the Twenty-Fifth Judicial District Court at Point-à-la-Hache, Plaquemines Parish, Louisiana, and appeared with and for Gary Duncan. (Tr. I, 233, 236; III, 202-203; IV, 153.)

The two attorneys and their client were received in a private conference room where juvenile matters were conducted by the presiding judge, Hon. Eugene E. Leon, a defendant herein. An Assistant District Attorney, Daryl W. Bubrig, was also present. (Tr. I, 236-237; IV, 153-154; VII, 116-117.) Mr. Collins introduced Mr. Sobol to Judge Leon as an attorney from Washington, D.C., whom

he would like to associate in the matter.[43] [The circum-

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[43] There is no controversy on this point. Five of the persons present at this November 21 proceeding testified in the present case. Two, Gary Duncan and Daryl Bubrig, related only in general terms that Mr. Collins introduced Mr. Sobol to Judge Leon. (Tr. III, 203; VII, 117-119.) It is explicitly stated in Mr. Bubrig's testimony that Mr. Sobol was introduced as an attorney. (Tr. VII, 127). Mr. Collins testified: "I introduced Mr. Sobol to the Court as a lawyer from Washington, D.C." (Tr.I,237.) "I introduced Mr. Sobol as being a lawyer from Washington, D.C., and that's the language I used as I remember it." (Tr. I, 237-238.) "I. . . indicated to the Court that Mr. Sobol was a lawyer from Washington, D.C. who was to be associated in the case with me." (Tr. II, 257-258.) (See also Tr. II, 29-31.) Mr. Sobol testified: "Mr. Collins introduced me as an attorney from Washington, D.C., that he would like to have associated with him in handling the case." (Tr. IV, 154.) Judge Leon testified on his deposition first that Mr. Collins "told me he was from Washington" (Plaintiffs' Exhibit #4, p.36); then, that it might have been said that Mr. Sobol was from Washington (id., p.40); and, finally, that he did not recall whether it was said Mr. Sobol was from Washington (id., p. 48). At the trial, Judge Leon's testimony was:

> "Q. When Mr. Collins introduced Mr. Sobol to you for the first time, he did tell you that Mr. Sobol was from Washington?"
> "A. I believe so. I think I answered that way in my deposition." (Tr. VII, 178.)

Judge Leon does state in his deposition that Mr. Sobol never asked to make an appearance. (Plaintiffs' Exhibit #4, p. 36.) But this is plainly a mere matter of verbalisms. Judge Leon asserts in the same sentence that Mr. Sobol was introduced to him "as an attorney" (ibid.), and there cannot have been any doubt that he was appearing as such for Gary Duncan. The clerk's minute entry in the juvenile case file for November 21 indicates that Mr. Collins and Mr. Sobol appeared for Gary Duncan. (Plaintiffs' Exhibit #34, Minute Entry, November 21, 1966.) It should be noted also that Mr. Sobol appeared alone before Judge Leon to represent Mr. Duncan on four subsequent occasions. Neither the Judge's performance on these occasions nor his testimony at trial or on his deposition herein suggests for a moment that he was surprised to see Mr. Sobol appear for Duncan, or that he thought Mr. Sobol was not appearing as he appeared to be appearing.

his story that Mr. Douglas told him on the morning of sentencing that Mr. Sobol was unlicensed in Louisiana. The Judge admits that immediately thereafter, when Mr. Sobol

stances of this introduction were such that Judge Leon must have known Mr. Sobol was not licensed to practice in Louisiana.[44/]

44/ We do not believe that this factual finding is an essential element of any of the Plaintiffs' claims, including even the claim of entrapment under the Paley and Cox decisions cited in Plaintiffs' Pretrial Memorandum of Law, pp. 53-54, n. 27. As we read those cases, the constitutional contention of entrapment does not depend upon purposeful misleading by the entrapper, but upon the reasonableness of belief by the party entrapped that he is being permitted to do what he does. The question whether Judge Leon knew or should have known that Mr. Sobol was an out-of-state attorney is one of the very few factually contested issues in this lawsuit, and the Court may prefer not to resolve it.

However, if the Court deems the question legally material, we respectfully urge that the finding in the text must be made. We recognize that Judge Leon testified he did not know Mr. Sobol was an out-of-state attorney until told so by Mr. Douglas in a phone conversation on the morning of sentencing, February 1, 1967. (Tr. VII, 172-173; Plaintiffs' Exhibit #4, pp. 38-40, 44-48.) While we do not like to ask the court to discredit a judge, we submit that this testimony is incredible for several reasons:

(1) It is admitted by Judge Leon that Mr. Sobol was introduced to him as a lawyer from Washington, D.C. (Note 43, supra.) Plainly, there is no meaning which can be assigned to such an introduction in professional or judicial experience other than that Mr. Sobol was not licensed in Louisiana. It beggars the imagination that one Louisiana-licensed lawyer should introduce another Louisiana-licensed lawyer to a Louisiana judge in a Louisiana matter as a lawyer from Washington, D.C.

(2) Judge Leon's testimony is self-contradictory and appears designed to have the best of two inconsistent positions: (a) that he did not know Mr. Sobol was unlicensed in Louisiana, and (b) that he knew Mr. Sobol was unlicensed here, but did not know he was anything but a short-term visitor. The latter position appears in the Judge's deposition: "He told me that he was from Washington, but he never told me that he was practicing law in the State of Louisiana." (Plaintiffs' Exhibit #4, p.36) When I first met this gentleman he was not a residence [sic] and practicing in the State of Louisiana." (Id., p. 35.)

(3) Judge Leon's behavior is totally inconsistent with his story that Mr. Douglas told him on the morning of sentencing that Mr. Sobol was unlicensed in Louisiana. The Judge admits that immediately thereafter, when Mr. Sobol

The Judge permitted Mr. Sobol to appear with Mr. Collins

Footnote 44, continued/

appeared before him for Duncan's sentencing, Judge Leon made no mention to Mr. Sobol of Sobol's alienage, of which he assertedly had just become aware. (Id., pp. 4748; see also, id., pp. 45-46.) Judge Leon's explanation for this reticence is that "I think I was too disturbed, telling me something like this, that it just passed--it didn't even dawn on me to bring this up." (Id., pp. 47-48.) That inherently incredible testimony is made the more incredible because Judge Leon was not too disturbed to raise with Mr. Sobol an unrelated question regarding the propriety of Sobol's appearance--his relationship with Mr. Elie as an Assistant District Attorney (See note 47 infra.) Judge Leon's reticence, rather, is consistent with his later behavior toward Mr. Sobol: failing again to mention Mr. Sobol's alienage when Mr. Sobol first called him and later came to see him on February 21, when the Judge concededly had known for at least three weeks that Mr. Sobol was unlicensed in Louisiana, and was sufficiently undisturbed to have issued a warrant for Mr. Sobol's arrest; and failing to mention to Mr. Sobol, when he received him in chambers that day, even that he had issued a warrant for Mr. Sobol's arrest. (Plaintiffs' Exhibit #4, pp. 29, 41-46.)

(4) Three credible witnesses contradict the Judge. Mr. Sobol and Mr. Collins both testify that the tenor of the conversation on November 21 made clear that Mr. Sobol was unlicensed in Louisiana. (Tr. II, 29-31; V, 83.) (Mr. Daryl Bubrig's testimony that this was not made clear is incredible, both for the reasons set forth in paragraph numbered (1) and the last paragraph of this footnote, and because Mr. Bubrig admitted that "our court proceedings are not that large so that when an out-of-state attorney is brought into a case that I would not have some knowledge of it." (Tr. VII, 119)See also notes 52, 60, infra.(This statement pointing in the opposite direction was the only support offered by Mr. Bubrig for his conclusion.) This might be a matter simply of differing interpretations, but Mr. Nils Douglas flatly testifies that he did not inform Judge Leon by phone of Mr. Sobol's alienage on February 1. (Tr. IX, 96, 99-100.)

In any event, whatever Judge Leon may or may not have known subjectively, we submit this Court is obliged to find that he should reasonably have known Mr. Sobol was an out-of-state attorney. Mr. Sobol was introduced to the Judge as from Washington, D.C., as the Judge concedes. (Supra.) And, of course, Mr. Sobol was a stranger who hardly looks like a Louisianian. When the Defendant Leander Perez, Jr., first saw Mr. Sobol in court at the Duncan trial, he became

for Gary Duncan.[45]

Footnote 44, continued/
suspicious of Sobol because "He looked like a Yankee to me." (Plaintiffs' Exhibit #5, p.58.) Defendants' witness George Ehmig, Esq., in court the same day, noticed Sobol and stayed to watch him perform because "He was an out-of-state attorney . . . I had never seen Mr. Sobol before and I didn't know him. So, just like when a new kid moves in the block, you see what he is going to do." (Tr. VII, 141.) Thus, it appears that the only person in the courtroom unaware that Mr. Sobol was a "new kid . . . in the block" was the Judge! At the least, the Judge was on notice. (We note that Judge Leon has testified unequivocally that he was never told Mr. Sobol was a Louisiana-licensed attorney. (Plaintiffs' Exhibit #4, pp. 33-34.))

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Mr. Sobol testified that: "/T/here was some form of assent by Judge Leon, and I can't recall exactly what the words were, and it could simply have been a nod of his head. But, in any event, it seemed that /Mr. Sobol's representation of Duncan/ was acceptable . . ." (Tr. IV, 154.) It is, of course, uncontroverted that Judge Leon did not decline to permit Mr. Sobol to appear for Duncan, either on November 21 or on any of the four subsequent occasions when Sobol represented Duncan alone in his court. Mr. Sobol's appearances for Duncan on January 4 (in the juvenile matter) and on January 25(at Duncan's trial, the appearance that is the basis for the Sobol prosecution) went entirely without objection by the Judge. (Tr. IV, 157-158 (January 4); Tr III, 205; IV, 158 (January 25).) On February 1, the sentencing date, Judge Leon raised the question of Mr. Sobol's association with Mr. Elie as an Assistant D.A. (see note 47 infra), but said nothing about Mr. Sobol's being unlicensed (ibid.). Thereafter, on February 21, the Judge assented to Mr. Sobol's request to appear for a renewal of Gary Duncan's bond. (Tr. IV, 163; Plaintiffs' Exhibit #4, pp. 27-28, 41-43.) Mr. Sobol's and Judge Leon's testimony are in perfect agreement that on none of Sobol's five appearances before the Judge did Judge Leon question his right to represent Duncan on the ground that he was unlicensed. (Tr. IV, 167; V, 83; Plaintiffs' Exhibit #4, pp. 39-43, 45-46.)

At the trial herein, defendants made much of the fact that no written motion was made for leave to associate Mr. Sobol in the Duncan case. But plaintiffs' and defendants' witnesses alike agreed that the Duncan matter, originating as a juvenile case, was being handled very informally. (Tr. I, 238, 258; VII, 118.) And, even in an adult matter, L.S.A.-R.S. § 37:214 requires no written motion. The

At the November 21 juvenile court proceeding, Mr. Collins filed the motions to quash and for a bill of particulars that he had prepared. The Assistant District Attorney, Mr. Bubrig, asked for time to study these, and Judge Leon set the motions for hearing January 4, 1967. (Plaintiffs' Exhibit #34, Minute Entry, November 21, 1966; Tr. I, 238-239; IV, 154-155; Plaintiffs' Exhibit #4, p. 34.) Shortly thereafter, Gary Duncan was arrested, jailed and required to make bond again, this time on a charge of simple battery (L.S.A.-R.S. § 14:35) arising out of the same episode as the juvenile charge. (Defendant's Exhibit #2, p. 1, Arrest Report, November 25, 1966; Tr. I, 239; III, 203; IV, 155.) Mr. Sobol protested this rearrest to Mr. Bubrig as outrageous behavior. (Tr. IV, 155-156.) Then, after consultation with Gary Duncan (Tr. III, 204), Mr. Sobol and Mr. Collins together prepared a demand for jury trial on the battery charge. (Tr. I, 239-240.) This document bore the typed names of Collins, Douglas and Sobol and was signed by Mr. Collins. (Defendants' Exhibit #2, pp. 29, 193, 196, 199, 200, Demand for Trial by Jury.)

Gary Duncan's arraignment on the battery charge was set for December 7, 1966. On that date, Mr. Sobol was quite ill, could not appear, could not locate Mr. Collins,

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Footnote 45, continued/
testimony of Mr. Collins makes clear that he had previously introduced out-of-state attorneys to Louisiana courts in such matters without a written motion. (Tr. II, 30.)

and therefore advised Gary to appear alone, plead not guilty and inform Mr. Sobol of the trial date. (Tr.IV, 156.) This was done, and the battery case was set for trial December 21. (Tr. IV, 156; Defendant's Exhibit #2, p.35, Minute Entry, December 7, 1966.) Later, on defense motion, the trial was continued to January 25, 1967. (Tr. IV, 157; Defendant's Exhibit #2, p. 226, Order of December 19, 1966.)

January 4, Mr. Sobol appeared with Gary Duncan before Judge Leon for hearing of the motions in the juvenile matter. Mr. Bubrig indicated that he wanted to drop the charge, and the Judge ordered a nol pros entered. (Tr. IV, 157; Plaintiff's Exhibit #34, Minute Entry, January 4, 1967.) Neither Judge Leon nor anyone else questioned Mr. Sobol's appearance for Gary Duncan on this occasion. (Tr. IV, 157-158.)

January 25, Mr. Sobol again went to the courthouse at Pointe-a-la-Hache and appeared alone on behalf of Gary Duncan at trial of the battery charge. Mr. Bubrig principally presented the case for the prosecution, but during trial the District Attorney, Leander Perez, Jr., a defendant herein, entered the courtroom and participated in the matter for the State. Judge Leon presided. Mr. Sobol presented the demand for jury trial; it was denied; witnesses for the prosecution and defense were heard; Judge Leon convicted Duncan; Mr. Sobol requested the

the statutory time allowed by Louisiana law between verdict and sentencing; this was allowed, and the case set over to February 1. (Tr. IV, 158-159; Defendants' Exhibit #2, pp. 38-39, 56-169, Minute Entry and Transcript, January 25, 1967.[46]) Again, neither Judge Leon nor anyone else questioned Mr. Sobol's appearance for Gary Duncan. (Tr. III, 205; IV, 158.)

46/

Defendants made some effort at the hearing herein to suggest that Mr. Sobol's representation of Gary Duncan at the battery trial was "a terrible job." (Tr. III, 215.) There is simply nothing to this theory. It seems to be based on four equally insupportable assertions:

(1) That Mr. Sobol allowed Gary Duncan to make a "judicial confession" when he took the stand at trial and testified that he had touched the complainant Herman Landry. (Tr. IV, 20) But we assume that defense counsel, Mr. Provensal, has now withdrawn from his misleading attempt to define simple battery as the slightest unconsented touching (Tr. III, 219-220), and will concede that at the least, such a touching must be in a rude and insolent manner in order to constitute an offense. (L.S.A.-R.S. § 14:33.) As Mr. Sobol adequately explained, therefore, a defense of Gary Duncan based on denial that any touching of Landry was rude or insolent is hardly a "judicial confession." It is simply an honest, good defense. (Tr. V, 9-11.)

(2) That Mr. Sobol prejudiced Gary Duncan by opening the door to a showing of prior arrests for traffic violations, considered serious infractions by Judge Leon. (Tr. III, 215-218; IV, 18-20; VII, 141-142, 153; 171-172.) One problem with this theory is that--as the defense herein appears to acknowledge(Tr. VII, 153-155)--the only speculative harm that could come to Gary Duncan from Judge Leon's knowledge of his prior arrests has to do with sentencing. (We do not understand Judge Leon to assert that he was prejudiced into finding Duncan guilty of battery on account of prior arrests for traffic violations, however bad the traffic conditions in Plaquemines.) But, of course, there is not and could not be in this record any showing that Judge Leon would not have had access to a rap sheet on Duncan, showing his arrests, prior to sentencing,

February 1, 1967, for the third time Mr. Sobol appeared alone before Judge Leon, representing Gary Duncan at the sentencing on the battery charge. After he had made his statement on behalf of Duncan, Judge Leon asked whether Mr. Sobol was not associated in the matter with Mr. Collins and Mr. Douglas. Mr. Sobol said he was. Judge Leon pointed out that Mr. Elie, a partner of Collins and Douglas, was an Assistant District Attorney in Orleans Parish, and asked Mr. Sobol how therefore he could appear for the defense in a criminal matter in light of Article 65 of the new Louisiana Code of Criminal Procedure, prohibiting partners of Assistant D.A.'s from appearing to defend criminal cases, whether within or without the Assistant D.A.'s Parish. Mr. Sobol explained that Article 65 had become effective only on January 1, 1967; that Collins, Douglas and Sobol had undertaken to represent Gary Duncan prior to that date, in a matter set for trial during the calendar year 1965; and that when the Code came into

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Footnote 46 continued/
whether or not the arrests were brought out at trial. And, at the hearing on the guilt phase, a showing that Duncan had never been in trouble of any sort, except for traffic violations, was obviously helpful to him.

(3) That Mr. Sobol failed to move for a change of venue. In fact, Mr. Sobol considered this course and rejected it for entirely adequate reasons. (Tr. V, 5-7.)

(4) That Mr. Sobol failed to seek review of Duncan's conviction on the facts by the Louisiana Supreme Court. Mr. Sobol's response to this suggestion supports the inference that he is better informed concerning Louisiana procedure than his interrogator. (Tr. V, 7-9.)

effect, they did not withdraw because they did not construe Article 65 as interfering with pre-existing attorney-client relationships, where withdrawal would leave the defendant without a lawyer shortly before trial date.[47] Judge Leon said,

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[47] Defendants have made something at the hearing herein of Mr. Elie's position as Assistant District Attorney of Orleans Parish at the time of the Duncan trial, in light of Article 65. (e.g., Tr. I, 130-131; II, 25.) The matter was also the subject of a complaint against Collins, Douglas and Elie, lodged with the Louisiana State Bar Association's Committee on Ethics and Grievances by Mr. Provensal, counsel for the defendants herein, after commencement of the present action. (Plaintiffs' Exhibit #1, Letter, Sidney Provensal to Walter Arnette, February 27, 1967.) The explanation given by Mr. Sobol to Judge Leon on February 1 (Tr. IV, 160), set forth in text above, was also that given by Mr. Douglas to Judge Leon by phone earlier on the same date (Tr. IX, 99-100), and that given by Mr. Collins to the Bar Association in its pursuit of Mr. Provensal's complaint. (Government Exhibit #1.) On the basis of that explanation, the Ethics and Grievances Committee duly found that no unethical conduct appeared on the part of C. D. & E. (Plaintiffs' Exhibit #1, Letter, Thomas O. Collins, Jr. to Robert F. Collins and Nils R. Douglas, June 6, 1967.) In any event, the matter is without significance in the present lawsuit -- except as it evidences further harassment of the plaintiffs by the defendants -- since Defendant Leander Perez, Jr., in his deposition, has unequivocally asserted that the prosecution of Mr. Sobol has nothing to do with his association with Mr. Elie. (Plaintiffs' Exhibit #5, pp. 22,23.) This position is consistent with the defendants' legal theory that Mr. Sobol is not an out-of-state attorney "temporarily present" in Louisiana, and hence that he is properly charged under L.S.A.-R.S. §213, without reference to § 214. (Tr. VII, 189-191.)

nothwithstanding this explanation, that so long as Mr. Elie remained an Assistant District Attorney, he did not want anyone associated with him to appear in a criminal case in the Judge's Court. Mr. Sobol accepted this edict.[48/] Nothing was said by Judge Leon or anyone else about Mr. Sobol's not being licensed to practice in Louisiana. (Tr. IV, 161; Plaintiffs' Exhibit #4, pp. 45-46, 47-48.) Duncan was then sentenced by Judge Leon to a jail term of 60 days and a fine of $150. (Defendants' Exhibit #2, p. 24, Minute Entry, February 1, 1967.)

Mr. Sobol handed up to Judge Leon for his approval

48/ All of the witnesses who heard Judge Leon's remarks to Mr. Sobol are in essential agreement about their substance. (Tr. IV, 159-161, 218-219; VI, 116, 117; VII,17-19; Plaintiffs' Exhibit #4, pp. 45-48.) However, there is a dispute as to when they were made. Mr. Sobol is positive that they were made on February 1, at the sentencing proceeding. (Tr. IV, 218.) Judge Leon so testified on his deposition. (Plaintiffs' Exhibit #4, pp. 45-48.) But Mr. Hotz, the court reporter, recalls their being made on January 25, the date of Duncan's trial, as Mr. Hotz was packing up his equipment at the conclusion of the proceeding. (VII, 17-19.) The testimony of Mr. Lobrano, the clerk of court, and of Defendant Leander Perez, Jr., does not speak to the date. (Tr. VI, 116, 117; Plaintiffs' Exhibit #5, pp. 20-25.)

The matter is not of crucial significance, but, on the whole record, February 1 is the far more likely date. Judge Leon does not suggest, and his testimony is generally inconsistent with the view, that he spoke to Mr. Sobol twice about the Elie question. His testimony is also firm that the one occasion on which he raised the issue was the day he spoke to Mr. Nils Douglas by phone (Plaintiffs' Exhibit #4, pp. 46-48), and this could only have been February 1, the sentencing date, because the purpose of Mr. Douglas' call was to discuss sentencing.(Tr. IX, 98.) Moreover if Judge Leon said on the trial date that he did not thereafter want a partner of Mr. Elie's in his court on a criminal matter one would suppose that he would have raised that question again when Mr. Sobol appeared for Gary Duncan in open court at sentencing; and, as indicated above, the Judge recalls mentioning the question only once.

a bill of exception that embodied a facsimile of the demand for jury trial theretofore filed over Mr. Collins' signature. The facsimile was unsigned; Judge Leon requested Mr. Sobol to sign it; Mr. Sobol did. (Tr. V, 68.) This was the only pleading or document signed by Mr. Sobol in the Duncan case prior to the United States Supreme Court phase of that litigation, infra.[49] (Tr. V, 69; Defendants' Exhibit #2, passim.) Mr. Sobol then arranged with Judge Leon to set a new bond pending review on prerogative writs by the Supreme Court of Louisiana.(Tr. IV, 161.) Gary Duncan went to jail for the third time until the new bond was made. (Tr. III, 204-205; IV, 162.)

Writs of review were thereafter duly sought in the Louisiana Supreme Court, on behalf of Gary Duncan, in a petition subscribed by Mr. Collins, Mr. Douglas and Mr. Sobol, and signed and verified by Mr. Collins. (Tr. I, 241-242; IV, 162; Defendants' Exhibit #2, pp. 41-49.) The writs were denied in an order of February 20, 1967. (Defendants' Exhibit #2, p. 18.) This was received in the mail by Mr. Sobol on the morning of February 21. Knowing that the order would have the effect of terminating the bond set for Duncan on February 1 by Judge Leon, and intending to take the Duncan case to the Supreme Court of the United

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[49] As a member of the bar of the Supreme Court, Mr. Sobol himself signed the Notice of Appeal to that court, and the Notice of Intention to Appeal required in order to secure Gary Duncan's release on bond pending the appeal. (Tr. V, 69.)

States, Mr. Sobol immediately phoned Judge Leon's chambers and requested an appointment, for the purpose of having the Judge continue Gary's bond. Mr. Sobol was told that the Judge would see him if he could get there before noon; otherwise the matter would have to wait until two days hence.[50] He then drove immediately, alone, to Pointe-a-la-Hache. (Tr. IV, 163.)[51]

Arriving at the courthouse shortly before noon, he went to Judge Leon's chambers. The Judge left briefly, returned, invited Mr. Sobol in, and discussed with

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[50] The substance of the phone communications between Mr. Sobol and Judge Leon's chambers is undisputed, although Judge Leon seems to remember talking personally with Sobol, while Sobol recalls that he spoke with the Judge through the mediation of the Judge's secretary. (Tr. IV, 163; Plaintiffs' Exhibit #4, pp. 27-28.)

[51] Mr. Sobol testified that he had taken the Judge's announcement of February 1, relating to partners of Mr. Elie appearing in his court, to refer to future matters, and not to the technical steps remaining to finish up the Duncan case. Nevertheless out of an abundance of caution, he tried that morning to locate Mr. Juneau, L.C.D.C.'s recently retained Louisiana-licensed staff counsel, so that Mr. Juneau could go to Pointe-a-la-Hache on the bond matter. Juneau, however, could not be found; and, faced with the prospect of Gary Duncan's going to jail for two days if Judge Leon were not seen by noon, Mr. Sobol decided to make the trip to Plaquemines Parish himself. (Tr. IV, 228.)

him the question of Gary Duncan's bond pending an appeal to the Supreme Court of the United States. Judge Leon declined to continue the former appeal bond, but set new bond for Gary in an identical amount. He raised no question of Mr. Sobol's appearing for Gary, nor did he inform Mr. Sobol that earlier the same morning he had issued a warrant for Mr. Sobol's arrest. He asked Mr. Sobol whether Mr. Sobol planned to remain around the courthouse for awhile. Mr. Sobol replied that he was going to make a phone call. He took his leave of the Judge, went to a public phone booth in the courthouse, tried to place a call, left the booth, and was arrested. (Tr. IV, 164; Plaintiffs' Exhibit #4, pp. 28-31.) Mr. Sobol's February 21 meeting with Judge Leon was his fourth appearance physically alone before the Judge representing Gary Duncan, on none of which occasions had the Judge said one word about Mr. Sobol's being unlicensed to practice law in Louisiana. (Plaintiffs' Exhibit #4, pp. 39-46; Tr. IV, 167; V, 83.)

3. Mr. Sobol's Arrest and Prosecution.

In fact, prior to Mr. Sobol's noontime conference with the Judge, Judge Leon had issued a warrant for his arrest. (Plaintiffs' Exhibit #4, pp. 28-29.) Following Mr. Sobol's phone call to the Judge's chambers in the morning, Judge Leon had called the Assistant District Attorney, Daryl Bubrig, and informed him that Sobol was on his way to Plaquemines. The Judge testified herein that he did not recall why he so informed Mr. Bubrig; and he denied knowing at the time that the District Attorney's office was planning to file charges against Sobol. (Plaintiffs' Exhibit #4, pp. 43-45.)

However, Bubrig then phoned his superior, Leander Perez, Jr., the District Attorney, to tell him of Mr. Sobol's imminent arrival in the Parish. Mr. Perez, who was in his office in adjoining St. Bernard Parish, rushed an information against Mr. Sobol over to the Plaquemines Parish courthouse by messenger. (Plaintiffs' Exhibit #5, pp. 15-16, 25, 59, 63-64.)[52/] Mr. Bubrig forthwith took the information before Judge Leon, who

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52/ Mr. Bubrig testified herein, denying that he called District Attorney Leander Perez, Jr., to tell him of Mr. Sobol's expected arrival in Plaquemines Parish on the day of his arrest. (Tr. VII, 127-130.) This testimony is incredible, for several reasons. First, it is flatly contradicted by Mr. Perez in the passages of his deposition (Plaintiffs' Exhibit #5) cited in the text. Second, it asks this Court to believe that, by some astounding coincidence, Mr. Perez just happened to file the information against Mr. Sobol on the very day of Mr. Sobol's last-minute trip to Plaquemines. (If it was not a coincidence, and Mr. Bubrig is telling the truth, then Judge Leon's testimony that he spoke with Bubrig, but not with Mr. Perez, between the time of Mr. Sobol's phone call and his noon arrival must be discredited. (Plaintiffs' Exhibit #4, pp. 26-31, 43-45.)) Third, with all respect, we do not hesitate to ask the Court to discredit Mr. Bubrig's material testimony in its entirety, on the basis of its internal inconsistencies (see, e.g., notes 44 supra, 60 infra) and Mr. Bubrig's demeanor on the stand.

ordered it filed and issued a bench warrant for Mr. Sobol's arrest. (Plaintiffs' Exhibit #4, pp. 43-44; Plaintiffs' Exhibit #33 /File in State v. Richard B. Sobol, 25th Judicial District Court, No. 14998_7, Minute Entry, February 21, 1967.) The warrant was returned executed by Mr. Sobol's arrest the same day, and the Arrest Report identifies "Judge Eugene E. Leon, Jr." as the complainant (Plaintiffs' Exhibit #33, Arrest Warrant; Arrest Report); although Judge Leon testified at his deposition that he made no complaint against Mr. Sobol and had no idea why he should have been listed as the complaining witness. (Plaintiffs' Exhibit #4, p. 49.)

Following his arrest by a deputy sheriff, Mr. Sobol was taken to jail. He was fingerprinted two or three times. A number was put on him and a "mug" photograph taken of him two or three times. His brief case, containing the Duncan papers, was taken from him over his objections. His belt and necktie were taken away. He was jailed in a community jail cell for about four hours, until his bail could be arranged and posted. (Tr. IV, 164-166.) That bail was set by Judge Leon in the amount of $1,500, without having Mr. Sobol appear before him or making any inquiry into Mr. Sobol's background and character. (Plaintiffs' Exhibit #4, pp. 32-33, 49-51: Tr. IV, 166.) The bond was made by a professional surety company (Plaintiffs' Exhibit #33, Bond Receipt), and Mr. Sobol was permitted to leave Plaquemines Parish.

The information filed against Mr. Sobol, charging him

with the unlicensed practice of law under L.S.A.-R.S. § 213, is currently pending in the Twenty-Fifth Judicial District Court. It was prepared and signed by Defendant Leander Perez, Jr., who is responsible under Louisiana law, in his capacity as District Attorney, for prosecuting the case against Mr. Sobol. (Plaintiffs' Exhibit #33.) The legal position of Defendant Leander Perez, Jr., in the present proceeding makes clear his intention to proceed with the prosecution unless enjoined by order of this Court.

4. Proceedings in the Duncan Case After Mr. Sobol's Arrest.

/Note: This Part (C) (4) is based entirely on uncontroverted evidence./

Following the setting of new bond by Judge Leon on February 21 pending appeal to the Supreme Court of the United States in the Duncan case, Gary Duncan several times attempted to post this bond, and each time was informed by the sheriff's office that it was unnecessary; that his prior bond in the same amount was still good. However, he was then arrested for the fourth time in this case, jailed for the fourth time, and required to make new bond. In addition, the sheriff's office on this occasion took the illegal position that the property put up to secure the bond was required to be equal in value to twice the bond amount; and by the time it reversed that position and permitted bond to be made in the form allowed by law, Gary Duncan had spent twenty-four hours in jail. (Tr. III, 206-207; IV, 168-170, 229.)

The Duncan case was duly appealed to the Supreme Court of the United States, on the question whether Gary Duncan's trial without a jury was consistent with the Sixth and Fourteenth Amendments. The Supreme Court noted probable jurisdiction and now has the case under submission. 53/ Mr. Sobol, on behalf of Duncan, handled all of the Supreme Court matters in the case. (Tr. II, 92-93.)

5. The Roles of Collins, Douglas and Sobol in the Duncan Case.

/Note: This Part (C) (5) consists of inferences compelled by entirely uncontroverted evidence./

The facts recited in the preceding two subsections and the papers on file in the Duncan record (Defendant's Exhibit #2) support the findings in this subsection. Both Mr. Collins and Mr. Douglas were actively involved in the Duncan case from its inception. Both appear on every document filed in the case prior to its determination by the Supreme Court of Louisiana. One or the other personally signed every such document, except the bill of exceptions signed by Mr. Sobol in open court at Judge Leon's request. Mr. Collins principally prepared the

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53/ These facts may be judicially noticed.

pleadings in the juvenile phase of the case[54/] and appeared therein to file those papers and to introduce Mr. Sobol. He also worked with Mr. Sobol on the demand for jury trial in the battery phase, and on the petition for writs of review in the Louisiana Supreme Court. In short, as he testified, he was actively engaged in the case throughout. (Tr. I, 250.) Mr. Douglas' concern for, and continuing involvement in, the case of Gary Duncan is evidenced, inter alia, by his phone call to Judge Leon, on the morning of the sentencing hearing, asking that sentence be suspended and representing that the case would not be appealed if this were done. (Tr. V, 78; IX, 98.)

Mr. Sobol also actively participated in the case at every stage. He appeared in the Twenty-Fifth Judicial District Court five times in the matter, was on the papers in the Louisiana Supreme Court, and principally handled the case in the Supreme Court of the United States. His involvement in the matter was indispensable to the representation of Gary Duncan

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54/ Defendants herein have suggested from time to time that the Duncan matter was two separate cases for purposes of L.S.A.-R.S. 37: 214. The factual finding which we ask in this regard is the indisputable one that the juvenile and battery charges (i) involved the same defendant; (ii) arose out of the same incident; (iii) were based on the same asserted conduct by the defendant; (iv) were processed in the same court; (v) before the same judge; (vi) and were handled by the same prosecutor, (vii) with appearances on all filed documents by the same defense counsel. (Defendants' Exhibit #2, passim; Plaintiffs' Exhibit #34, passim; Tr. I, 239, 250-251.)

by Collins and Douglas. It would have been impracticable for them to have assumed responsibility for a misdemeanor matter in a place 50 miles from New Orleans, and to have carried that matter to the Supreme Court of the United States, without the assistance of Mr. Sobol. (Tr. I, 245-246.) His expertise in constitutional law matters was regarded by Collins and Douglas as essential in the handling of the case. (Tr. II, 8.) Once the case was accepted by Collins, Douglas and Sobol, the decision that Mr. Sobol should try it on January 25, 1967 and that he should go to Plaquemines Parish in the matter of arranging bond on February 21, were dictated by practical considerations of efficiency in the handling of the matter by the three lawyers. Mr. Collins and Mr. Douglas were occupied by other matters on those two days, and Mr. Sobol was the only one available for the occasions. (Tr. II, 8-9, 258: IV, 163, 228.)

6. Financial aspects of the Case.

The Duncan case was handled by Collins, Douglas and Sobol entirely without fee, compensation or reimbursement for expenses. Neither Duncan nor any other person paid these lawyers or L.C.D.C. any money in the matter, or contributed anything to L.C.D.C. on account of it. (Tr. II, 4, 6, 92.). Gary Duncan, a nineteen-year-old Negro youth with a wife and a baby, was earning $250 per month at the time of his arrest and $375 per month at the time of trial in the present case in January, 1968. (Tr. III, 202, 208-209.) He could not, on these earnings, have afforded to pay for the legal handling of his case as it was

likely to be handled, and was in fact handled, by Collins, Douglas and Sobol. The lawyers considered Duncan's and his family's ability to pay a fee in the matter, and concluded that the case should be taken on, as a non-paying matter, for that reason, and because it was a civil rights case in their estimation (see Section (D) infra). (Tr. II, 4-5; 46-47.) The Collins, Douglas and Elie firm itself could not have afforded to handle the case without compensation or reimbursement for expenses; and its handling was made possible only by the financial assistance of L.C.D.C. (Tr. II, 92.)

D. The Duncan Case as a Civil Rights Case

1. The Concept of a Civil Rights Case

[At the trial of this matter, a considerable amount of effort was expended in hammering out the definition of a "civil rights case." It is important to keep that effort focused in terms of the legal issues presented by the lawsuit. The questions are not, of course, whether there is some discrete, doctrinally recognized and defined category of cases that are "civil rights cases" in contemplation of law and, if there is, what that legal definition may be. The questions, rather, are much more simple and undogmatic: whether L.C.D.C. and Richard Sobol are engaged in the provision of some sort of specialized legal service; if so, what it is; and whether, as they assert, persons seeking this service find it exceedingly difficult to obtain in Louisiana, with the result that their legal rights are abridged or denied. These questions are pertinent principally to the plaintiffs' contention that the enforcement against Sobol of L.S.A. - R.S. § 37:213, 37:214 is unconstitutional because its effect is to deny Negroes and civil rights workers adequate and equal access to the courts, legal representation, and legal advocacy.[55/]

55/ This is the Seventh Cause of Action, described at p. 44 of Plaintiffs' Pretrial Memorandum of Law. See id., pp. 75-77.

The questions are also pertinent because the plaintiffs assert that the sort of legal work which L.C.D.C. and Richard Sobol do is a form of political expression protected by the First Amendment against undue restriction by the State of Louisiana. In this regard, the inquiry is whether they are engaged in, and engaged exclusively in, a form of litigating and counseling activity -- what is conveniently termed the handling of "civil rights cases" -- that is a kind of ideological expression rather than a commercial venture.[56] To several other of the plaintiffs' contentions, the concept of a "civil rights case" has no relevance.[57]

It is the practice and policy of L.C.D.C. and of Richard Sobol as a staff attorney for L.C.D.C. to handle cases of a sort that they call and think of as "civil rights cases". In this meaning, a "civil rights case"

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[56] This relates to the First Amendment aspects of the Second and Third Causes of Action described at pp. 39-42 of Plaintiffs' Pretrial Memorandum of Law. See id., pp. 61-64.

[57] This is true of plaintiffs' Sixth Amendment claims, id., First Cause of Action, pp. 38-39, 49-53, and of Plaintiffs' Supremacy Clause and Privleges and Immunities Clause claims, aspects of the Second and Third Causes of Action, pp. 39-42, 54-60.

is one "that arises out of some effort to achieve racial equality, or in which case it is decided to use the courts toward that end." (Tr. IV, 181.) The key characteristics of such cases are "that there must be racial overtones," and /u/ sually there is some connection with significant social change." (Tr. II, 81.) The partners of the Collins, Douglas & Elie firm, and Mr. Sobol in their testimony made quite clear that the characterization of a case as a "civil rights case" does not depend upon the specific legal issues raised in the case but upon the context in which the case arises. (Tr. I, 172-174, 177; II, 17-18, 84-85; IV, 230-233.) If a legal controversy arises out of a confrontation in the course of Negro efforts to secure equality, that may be a "civil rights case," even though -- as the case is presented in a court -- "there was nothing that you could tell from the pleadings, from the proceedings, the word race never was mentioned. The word negro never was mentioned." (Tr. V, 67.)

> "I have handled many Civil Rights cases in which the only defenses raised were what might be called conventional defenses used in criminal cases. It may not have involved necessarily the Fourteenth Amendment, and it might have involved some, what might have been considered, well, something that didn't seem directly to be connected with Civil Rights." (Tr. II, 18.)

What is significant is that the prosecution or defense of the case, on whatever legal grounds, supports Negroes in their efforts to achieve equality and social advancement; that the lawsuit "protect and vindicate /their/. . . equal rights, again, in the racial context." (Tr. I, 254; see generally Tr. I, 252-254, and Mr. Sobol's explanation why the Grambling College case was considered a "civil rights case," at Tr. V, 61-67.)

Just as a case without overtly racial issues may be a "civil rights case," a case with overtly racial issues may not be one. (Tr. II, 81.) The systematic exclusion of Negroes from juries, for example, when raised defensively in a criminal proceeding, is not thought of as making the criminal case a significant civil rights matter. (Tr. I, 188; II, 72-73, 178-179; see also Tr. I, 134-135.) This is because the impact of the case is limited to the judicial proceedings themselves; it "doesn't rock the boat in terms of the social structure of the state." (Tr. II, 82.)

> "In other words, the First Amendment plays a part. . ., the expression of a point of view is involved in many of the cases that we handle, if you want to know the truth about it. . .
>
> "The cases that we handle, we consider are in the category of those that are going to rock the boat

in terms of the question of racial equality. That, to me, is the significant difference." (Tr., II, 81-82.)

The kinds of cases generally handled by the L.C.D.C. pursuant to this policy are described in detail in Subsection (A) (5) (d), supra. They include such litigations, designed directly to achieve equality of rights, as school desegregation suits, suits to desegregate public facilities and accommodations, and suits against employment and voting discrimination.(Ibid.) They also include the defensive handling of criminal cases against civil rights activists: the "sit-in demonstrations . . . picketing cases, the marching cases. We handled cases where negroes and whites were just walking down the street together and /were/ arrested. . . /W/e defended people who had written letters to city officials seeking, asking for conferences and they were arrested" (Tr. I, 69-70), cases in "a Civil Rights context such as prosecution for false voting registration on a technical matter which would not be /limited to/ a /civil rights/ demonstration, but we could say would be a Civil Rights division of a criminal case" (Tr. V, 27). These latter sorts of cases, for the most part, must today be handled in the state courts. (Tr. I, 193, 199; II, 93.)

2. The Duncan Case

Collins, Douglas & Elie, and Mr. Sobol determined to handle the Gary Duncan case because in their estimation, it was a civil rights case of the sort described immediately above.

The factual setting out of which the Duncan prosecution arose is not contested for present purposes. Gary Duncan was driving on a highway in Plaquemines Parish near the recently desegregated Boothville-Venice School. The school had been desegregated in September of 1966 (United States v. Plaquemines Parish School Board, E.D. La., C.A. No. 66-71a), and this episode occurred in October. Duncan saw his cousin and nephew, two young Negro boys whom he knew to be students at the formerly white school, standing along the roadstead confronted by four white boys. He stopped the car and asked whether anything was wrong. His relatives told him that the white boys wanted to fight. He spoke some words to the white boys, put his cousins into the car, and drove away.

During this exchange, he is alleged to have struck one of the white boys. His version of the striking is that he touched the boy lightly on the lower arm with his hand, in a placating gesture. The State's version, in the Duncan prosecution, is that he slapped the boy on the upper arm. (Tr. III, 198-200; Defendants' Exhibit #2, pp. 56-169.)

A white adult standing near the scene had shouted to Gary Duncan to go away when he first drove up. This man made a phone call. Within about ten minutes after the episode, the Sheriff of Plaquemines Parish apprehended Gary. He drove Gary back to the site. The four white boys were still there. The Sheriff examined the complainant for bruises, said he did not believe that Gary had hit the boy, and let Gary go. Later, Gary was arrested on a warrant and the prosecution against him was maintained.[58/]

To these facts, certain others must be added. In his investigation of the case, Mr. Sobol was told that Gary Duncan's cousin and nephew "and other negro students had been involved in harassment and difficulty in the school. . ." (Tr. V, 108-109.) Mr. Sobol had also read of the reaction of public officials in Plaquemines Parish to this Court's school desegregation order, and formed the impression that they:

> "encouraged violations of that court order, and in general encouraged lawlessness in Plaquemines Parish by encouraging students not to go to school and not to obey the requirements of state law under the mandatory school attendance laws, evoking,in

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58/ The events in this paragraph depend on Gary Duncan's testimony (Tr. III, 209-211), but that testimony was not contradicted, either in the present trial or at the Duncan trial.

my mind, an image, and from what I read in the newspapers, in the Times Picayune about their attitude about the case, and an image of what I would call massive resistance to the orders of this court." (Tr. IV, 181; see also Tr. IV, 182, 184-185, 231-233.)

Mr. Sobol's impression in this regard was, at the very least, a reasonable one.[59/]

59/ We do not think it necessary to relitigate for present purposes the history of offical resistance to the desegregation of the schools in Plaquemines Parish. That history appears in the record of United States v. Plaquemines Parish School Board, E.D. La., C.A. No. 66-71A, and the orders entered therein, which this Court may judicially notice. For present purposes, it is enough that Mr. Sobol's belief concerning offical reaction to desegregation in the Parish was reasonable. In this connection, we call the Court's attention to the admission by defendant Leander Perez, Sr., in his deposition, that he, "stated publicly, most emphatically, that it (the Court's desegregation decree) was judicial tyranny, etc." (Plaintiffs' Exhibit #3, p. 60; see id., pp. 60-63), and the admission of defendant Leander Perez, Jr., that he made a public statement likening the desegregation order to Hurricane Betsy: "this school integration, I considered that manmade disaster, and I would not prosecute the parents of children who did not attend school..." (Plaintiffs' Exhibit #5, pp. 47-48).

It was in this context that the Duncan case was perceived by Mr. Sobol and his associates. Two members of the firm, as well as Mr. Sobol, testified at great length on direct and cross examination in this trial as to why they considered Duncan a civil rights case. The sum and substance of their testimony is that school desegregation in Plaquemines was being met with both official declarations of opposition and schoolyard harassment of the Negro children (not amounting to major violence, it is true, but nonetheless harassing); that Gary Duncan had attempted to extricate his young relatives from such harassment and had either been wilfully falsely charged or at least charged in a "junk" prosecution that no prosecutor would maintain in a non-racial context; that the purpose and effect of this prosecution would be to lend official support and encouragement to physical harassment of the Negro children in the desegregated schools and, on the other hand, to intimidate the Negroes of the Parish and frighten them against the possibility of using even the mildest means to defend themselves from or to escape this harassment. (Tr. I, 123-126, 157-158, 252-256; II, 17-18, 34-38, 42-45, 60-61, 84-85; IV, 181-185, 231-233.) "[T]he Justice Department acts in these matters after there has been perhaps a pattern of conduct, but we don't want a pattern of conduct of harassment to begin. That's why we decided his case was important and it involved more

than just trivial, so called cruelty to juvenile, charges." (Tr. I, 256.)

> "/T/his protection of Duncan was going to have a very far reaching effect in Plaquemines Parish to the extent that they would not discourage or intimidate other Negroes who might have wanted to go to school as opposed to if something was not done to defend him and, in essence, our defense of Duncan was a kind of, if you want to call it, a demonstration of the fact that we were interested and concerned about what was going on in Plaquemines Parish." (Tr. I, 253.)

In addition, it was believed that Gary Duncan would not get adequate representation in Plaquemines Parish if Collins, Douglas and Sobol did not accept his case. (Tr. I, 123-124, 231.)

/As the Duncan prosecution has since developed, it in fact appears likely to have an intimidating effect upon Negroes in connection with school desegregation in Plaquemines Parish./ [60]

60/ We do not regard this finding as indispensable to any of Plaintiffs' legal submissions, but we ask the Court to make it because it tends to support the Fifth, Sixth and Seventh Causes of Action described at pp.43-44 of Plaintiffs' Pretrial Memorandum of Law. We are not asking the Court to find that the purpose of the Duncan prosecution is intimidation, but only that intimidation is its likely effect. We submit that both findings are supportable, on the following bases:

(1) The Duncan prosecution is a "junk" prosecution, arising out of an episode so trifling--on the State's own version of the facts--that no prosecutor would maintain it apart from its racial aspect. (Defendants' Exhibit #2, pp.56-169) This is sufficiently obvious to make its maintenance, in the context of Plaquemines Parish, by Defendant Leander Perez, Jr., intimidating. (See note 59 supra.)

Footnote 60, continued/

(2)Still less than it warrants prosecution does the State's version of the Duncan affair warrant the incredibly harsh sentence of two months imprisonment and a $150 fine, imposed on a nineteen year-old boy with a history of steady employment, a wife and baby, and no prior record for anything other than traffic offenses. (We venture to make this submission notwithstanding the seriousness with which traffic violations appear to be viewed in the Parish.)

(3) Gary Duncan's four arrests and jailings in this case (see subsections (C) (2), (4), supra), are outlandish. Perhaps they can be technically justified by the most perverse adherence to forms--excluding the fourth, which Gary Duncan tried and was not permitted to avoid--but, surely, this Court can notice that four distinct arrests and jailings of an employed, locally resident youth on a charge like Duncan's are unusual, unnecessary and oppressive.

(4) The insistence by the Sheriff's office that property in an exorbitant and illegal amount be put up for Duncan's bond, resulting in his unnecessary incarceration for a full day on the occasion of his fourth arrest (see subsection (C)(4) supra), is a further oppressive incident of the prosecution.

(5) Finally, we believe that pertinent negative inferences may properly be drawn from the testimony of Mr. Daryl Bubrig, the Assistant District Attorney who prosecuted Gary Duncan. Although the principal point of his direct examination appears to have been his testimony that the District Attorney, Leander Perez, Jr., knew nothing of the Duncan prosecution until Mr. Perez wandered into court in the midst of Duncan's trial on January 25. (Tr. VII, 114-115), Daryl Bubrig was forced to concede on cross examination that Mr. Perez might have made the decision to nol pros the juvenile charges against Duncan prior to January 4 (Tr. VII, 125-126). Again, to support the impression that Duncan's prosecution was pressed entirely by the private complainant Herman Landry and his family, Mr. Bubrig gave testimony indicating that he, Bubrig, did not inform the Landrys of the filing of the motion to quash the juvenile charge. (Tr. VII, 135.) Subsequently, confronted with the question why the Landrys filed a second charge, Mr. Bubrig admitted that he did indeed tell them about the motion to quash the first. (Tr. VII, 136.) He continued to deny he suggested that the Landrys file the battery charge, but he conceded that he told them that he doubted the juvenile charge was good. (Tr. VII, 137-137.) We again invite the Court's recollection of Mr. Bubrig's demeanor generally. See notes 44, 52 supra: and see Tr. VII, 121-125.

E. The Availability of Locally-Licensed Attorneys to Handle Civil Rights Cases in Louisiana.

/In this Part (E), we depart from the style of our proposed findings of fact elsewhere in Section I. We propose that the Court make only the general finding contained in the following indented paragraph. Our reason for this approach, and the evidence supporting the proposed general finding, are set out in the remainder of the Part./

> Considerable testimony was taken in this matter relating to the needs of the Negroes for legal services in civil rights matters, and to the availability of locally-licensed Louisiana attorneys able and willing to render such services. Without entering into the details of that testimony, the record as a whole firmly supports the conclusion that— for a number of complex reasons— there is a serious dearth of Louisiana-licensed attorneys to handle civil rights cases of the sort described in Part (D), above. This is a condition which has heretofore been noticed both by the Supreme Court of the United States and by the Court of Appeals for the Fifth Circuit. N.A.A.C.P. v. Button, 371 U.S. 415, 443 (1963); Lefton v. City of Hattiesburg, 333 F. 2d 280, 285-286 (5th Cir. 1964). The proof here establishes the same condition.

/We are reluctant to ask for more specific findings on this issue because, we submit, the only findings possible on this record would tend to exacerbate the situation which it is the purpose of L. C. D. C. and of this lawsuit to remedy. We have proved, we believe, that Negroes involved in civil rights matters completely lack confidence in Louisiana-licensed white attorneys to handle cases arising out of those matters. Findings herein concerning the actual performance of white attorneys in civil rights cases would only deepen that distrust— a result that is in no one's interest.

Before reviewing the specific evidence that supports our proposed general finding, it seems appropriate to sketch in summary what this Court knows the specifics show. There are more than 5000 lawyers licensed in Louisiana. Of these, fifty-eight are Negro and some of the Negro lawyers do not practice law, or are employed by one or another government.[61/] White Louisiana lawyers simply do not handle civil rights cases. The proof of this is overwhelming, much of it from the mouths of the defendants' own witnesses. Attorney after attorney was put on the stand who had never handled a civil rights case and knew exactly two white Louisiana lawyers that had. Again and again the question was asked whether

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61/ In March, 1967, Mr. Lolis Elie resigned his position as an Assistant D. A. for the Parish of Orleans. (Government Exhibit #1.) Had he remained in that post, the effect of Article 65 of the Louisiana Code of Criminal Procedure (in force January 1, 1967), would have been to preclude the defensive handling of criminal cases involving civil rights issues or situations by three lawyers in the State of Louisiana shown on this record to have handled an overwhelming number of such cases.

white attorneys took these cases, and the same answer was given again and again. "Oh, yes. Ben Smith and Jack Nelson. Ben Smith and Jack Nelson handle civil rights cases." With the exception of Ben Smith and Jack Nelson, three or four white Louisiana attorneys appear to have handled one or a few minor civil rights cases. This is literally all that the defense herein could show, although most of defense counsel put each other on the stand and, surely, they had both motive and time for thought enough to make a better showing if one could be made.

The defense proffered numerous lawyer witnesses who said that they would handle civil rights cases (most of them, only for a fee.) Doubtless these professions are sincere. But John Dewey's observation comes to mind that an object is a duck if it looks like a duck, sounds like a duck and acts like a duck. Conversely, when an object does not look like a duck, does not sound like a duck and does not act like a duck, it is probably not a duck, however much it may profess that it will be a duck when the occasion arises. The notion that through some sinister plot or pure accident these lawyers have not been asked to handle civil rights cases is evident nonsense. The defense has attempted to suggest that there is no legitimate way a white lawyer can make his availability known to the Negro community in civil rights matters. That is simply absurd. Ben Smith and Jack Nelson have been discovered by the Negro community. The slightest hint of availability to Collins, Douglas and Elie, or to A. P. Tureaud, or to other Negro attorneys or to L. C. D. C., for that matter— apart from other possible and permissible public evidences of concern— would suffice.

The reasons why white Louisiana lawyers do not get involved in these cases are complex. They are in part financial, in part the result of social pressures which this Court well knows and which were attested to by both plaintiffs' and defendants' witnesses. They are, in part also, a result of distrust by the Negro community, itself caused by lack of past involvement on the part of the white lawyers. Hopefully, this self-perpetuating cycle can be broken. L. C. D. C. could wish for nothing more. It is attempting to involve Louisiana lawyers—has hired two young members of the bar as staff counsel, and welcomes cooperation with Louisiana volunteers or associates. But, at this time, involvement by the white Louisiana lawyer is minimal. And the demise of L. C. D. C., which Richard Sobol's prosecution aims at, will cut one of the very few possible bridges between the Negro civil rights community and the white bar.

We would make one further point regarding specific findings of fact on the subject of unavailability of Louisiana lawyers to handle civil rights cases. We do not request such specific findings because we do not think that Richard Sobol's right to practice as he does in Louisiana should turn upon them. This is true even with regard to the two of plaintiffs' seven major legal submissions[62/] that depend in any part on the notion of unavailability. Those submissions state, in substance, that the application of Louisiana's unauthorized-practice statutes to Mr. Sobol is unconstitutional, because it would jeopardize and thereby abridge the rights of Negroes and civil rights workers to equal and adequate legal counsel. The defendants

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62/ The Sixth and Seventh Causes of Action described at pp. 43-44 of Plaintiffs' Pretrial Memorandum of Law.

have attempted to defeat plaintiffs' general submissions concerning the relative unavailability of local counsel in civil rights cases— i.e., the facts judicially noted by the Courts in Button and Lefton— with a quibble. They assert that there are some few Louisiana lawyers who would handle a civil rights case (although they never have), and perhaps one or two who would even accept Mr. Sobol's job.[63] But we cannot suppose that this Court would decide the constitutional questions presented here on grounds that make the litigation of such assertions decisive. For the result of a decision of this kind would be impossible in practice. Every out-of-state attorney who might come to Louisiana for a time would understand that he risked criminal liability— or was constitutionally protected against it— depending on the outcome of some later, post hoc, specific factual inquiry into states of mind of many persons which he neither knew nor could learn at the time of his coming. Every prosecution— or injunctive action— affecting such an attorney under L. S. A. - R. S. §§ 37:213-214 would turn into the protracted and exhausting trial that was Sobol v. Perez. Surely this is intolerable, and the upshot would be one or both of two consequences: a succession of Sobol v. Perez trials, and the most

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[63] Another reason against specific factual inquiry regarding the availability of local counsel in civil rights matters is that such an inquiry would necessarily involve considerations of the quality as well as the quantity of lawyers— an embarrassing business. We would, if we could, stay out of it. But if defendants' submissions are thought to raise the issue, we respectfully invite this Court's attention to the extensive testimony concerning the nature and volume of L. C. D. C.'s work. Some of the judges of the Court have seen L. C. D. C. matters presented. We leave it to the Court to decide whether any of the persons whom the defendants have shown are available at an appropriate salary for the position of L. C. D. C. Chief Staff Counsel could adequately meet the demands of the position.

overwhelming pressure upon outstate lawyers not to run the risks and undergo the burdens of such trials, but rather to stay away. If the plaintiffs herein are right that there is any federal constitutionally protected interest in having such attorneys in the state, in non-paying civil rights matters, in association with local counsel, that interest would be destroyed by a ruling turning on specific factual inquiries. See Dombrowski v. Pfister, 380 U.S. 479, 486-487, 490 (1965).

For this reason, we think that the Court will put its ruling on grounds that take account of the question of availability of local counsel in civil rights matters— if at all— only in the most general sense. Our proposed general finding is set forth above, and the evidence supporting it is as follows./

1. The Volume of Civil Rights Legal Work in Louisiana.

Some measure of the extent of the need for legal services in civil rights matters in Louisiana appears from the testimony of the two local Negro civil rights leaders who were witnesses at the trial, A. Z. Young and Zelma Wyche. (Tr. III, 94-154, 155-197.) Mr. Young's recounting of the Bogalusa story[64/] amply supports his opinion that there is a need for a full-time civil rights attorney in that city. (Tr. III, 115, 119.) Mr. Wyche's repeated, continuing resort to L.C.D.C. lawyers[65/] documents his own view that without a civil rights lawyer, civil rights work would "just about...end" (Tr. III, 175-176).

64/ See subsection (A) (5) (d) (i) supra.

65/ See subsection (A) (5) (d) (ii) supra.

Another measure of the volume of need is the experience of Louisiana-licensed Negro attorneys. Mr. Elie, whose testimony was corroborated by that of Mr. Collins,[66] testified that the firm has handled between 500 and 600 civil rights cases in seven years (Tr. I, 63-64), many involving numerous clients (Ibid; see also Tr. III, 184) and requiring an enormous expenditure of time (Tr. I, 77-78). The firm was unable to meet the demands made on it in 1964 when L. C. D. C. was initiated (Tr. I, 78-79); and, although the number of cases presented to it has decreased since the summer of the Civil Rights Act, their character has changed to that of big, protracted litigations involving still more time (Tr. I, 101; see also Tr. IV, 24-29.) (For example, six attorneys worked on the Brown v. Post case, supra (Tr. IV, 138-139), and three who had major responsibilites in connection with the Crown Zellerbach case were assisted by others (Tr. IV, 139).) Government involvement in the civil rights area has not reduced the burden. (Tr. IV, 150.) The one Negro attorney called by any of the defendants, Mr. Johnnie A. Jones, agreed that the bulk of civil rights litigation in the State was such that the Negro lawyers practicing here could not possibly handle it, without the aid of outstate lawyers. (Tr. IX, 12-16.) And the volume of demand is corroborated by the experience of the Louisiana A. C. L. U., which always has more cases than it can get attorneys to take. (Tr. II, 154.)

These circumstances bolster the opinion testimony of the two white Louisiana-licensed attorneys who have had any significant amount of contact with civil rights

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[66] See note 1 supra.

litigation and civil rights clients: Benjamin E. Smith, Esq., and John P. Nelson, Esq. Both, testifying in support of the Plaintiffs, developed at considerable length their conclusions that there is an enormous need and demand for the services of lawyers in civil rights matters in this State. (Tr. II, 142-144, 156-157, 175, 201-205; III, 5-13, 45-46.)

Finally, the volume of litigation actually handled by L. C. D. C. bespeaks the enormity of the need for such services. (See Subsection (A)(5) (d) supra.) Its significance is highlighted by Mr. Sobol's testimony that

> "There is virtually unlimited Civil Rights litigation that is pressed on lawyers who want it, who will take it, in Louisiana. We turn down five cases for every case we are able to accept, that I would consider to be a Civil Rights case."
> (Tr. IV, 193.)

2. Availability of Negro Attorneys Licensed in Louisiana.

The population of the State of Louisiana is about one-third Negro; of its 3,257,022 people in the 1960 census, 1,045,307 were black. (Government Exhibit #20-A, p. 20-26, Table 14.) There are more than 5,000 locally-licensed attorneys in Louisiana, and only fifty-eight Negro members of the Bar. (Tr. VIII, 85.) Of these, the testimony discloses that a number do not practice law (Tr. I, 76, 194; II, 22; III, 102; Government Exhibit #8, pp. 9-13, 87-89) and others do not handle civil rights cases (Tr. I, 76, 198; VI, 20; Government Exhibit #13, pp. 80-81, 114-116; Government Exhibit #15, pp. 32, 34).

The only Negro attorneys named in the testimony as handling civil rights cases— apart from Collins, Douglas & Elie, and Mr. A. P. Tureaud with his two partners, Trudeau and Morial (the latter now in the Legislature)— are: (1) Jesse Stone in Shreveport (who formerly served as local counsel in L. C. D. C. matters in Northern Louisiana (Tr. I, 89; Plaintiffs' Exhibit #16, p. 2, ¶7), but is no longer practicing civil rights law (Tr. II, 144; Government Exhibit #15, p. 33; Government Exhibit #16, p. 28)); (2) James Sharp in Monroe (Tr. I, 76; II, 145; III, 178-179, 194, 197; VI 20-21, 37; Government Exhibit #16) (who has not handled civil rights cases recently (Government Exhibit #15, p. 34; Government #16, passim)); (3) one McDaniels in Lake Charles (who handled a case or two and is now seriously ill (Government Exhibit #13, pp. 67-68; Government Exhibit #14, pp. 28-29; Government Exhibit #15, p. 35)); (4) Louis Berry in Alexandria (Tr. II, 145; III, 178-179; VI, 20, 37; Government Exhibit #15); (5) Murphy Bell in Baton Rouge (Tr. II, 145; III, 179); (6) Johnnie Jones in Baton Rouge (Tr. II, 145; IX, 4-30); (7) Marion White in Opelousas (Government Exhibit #13); (8) Richard Millspaugh in Opelousas (who has not handled civil rights cases for several years (Government Exhibit #14)); and (9) Earl Amedee in New Orleans (Tr. I, 198; V, 115-180). Among New Orleans Negro attorneys, only Collins, Douglas & Elie and the Tureaud firm handle civil rights matters in any volume (Tr. I, 194, 198), and the latter firm has had very few defensive, criminal, civil

rights matters (VI, 31-33). (See also Tr. II, 145-146.)[67] Mr. Johnnie A. Jones testified that, throughout the State, "there is only a few of us, not too many of us who have experience in the practice of Civil Rights." (Tr, IX, 12.)

There is no Negro lawyer in Madison Parish (Tr. III, 159; Government Exhibit #8, pp. 43-44), and no practicing Negro attorney in Washington Parish (Tr. III, 102; Government Exhibit #8, p. 43). (See also Tr. I, 69-77). Mr. Earl Amadee testified that he would not "make too many trips" into Washington Parish or other "Klan" territory. (Tr. V, 177-179.) With particular regard to Plaquemines Parish, there are no Negro members of the local bar (Plaintiffs' Exhibit #4, p. 11), and in a year on the bench, the only Negro lawyer Judge Leon has seen in court was Robert Collins in the Duncan case (Id., pp. 13-14). Mr. A. P. Tureaud has declined to go to Plaquemines in civil rights matters because— being a controversial civil rights attorney— he felt that he could not get fair consideration there. (Tr., VI, 10-15.) Mr. Johnnie A Jones testified that he would go to Plaquemines Parish in a civil rights case: "I would try to find a way out, but I would go." (Tr. IX, 8.)

> "You know, I have fears. I went in the Normandy Invasion on the third day. Dying in Plaquemines Parish

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[67] A few other names were mentioned in the depositions, but without sufficient exactness to establish that the attorneys have in fact handled civil rights matters: Israel Augustine, Freddie Warren, Alvin Jones (Government Exhibit #14, p. 29), and Lionel Collins (Government Exhibit #13, p. 67; see also Tr. VIII, 109, 117-118).

wouldn't be any different than dying in Normandy, on Normandy Hill for a cause." (Ibid.)

One major reason for the limited number of Negro members of the bar in the State of Louisiana is that, under State law, the State's law schools long admitted no Negro students. L. S. U. desegregated in 1951, Loyola in 1952 and Tulane in 1961. Southern, which opened its law school in 194 7, maintains a small, inferior and unaccredited school. (Tr. I, 248-249; II 47-53; V, 124-125, 171; VI, 28-29; VIII, 68-69; Government Exhibits #4, 5, 6, 8, 9, 24.) During a time when no law school in the State admitted Negroes, the result of this exclusion— coupled with the restriction of the veteran's diploma privilege to Louisiana law school graduates, was to make it far more difficult for Negroes than for whites to be admitted to the bar. (Tr. V, 125-129, 166-171.) The reasons why the few Negro attorneys at the bar of Louisiana may decline or hesitate to handle civil rights matters are developed more fully in subsection E(4), infra. Apart from the affirmative impediments described therein, it is obvious that there is only so much that a handful of men can do. The Tureaud firm presently has pending in federal district court twenty-seven school desegregation cases (Tr. VI, 10), and Mr. Tureaud testified on his deposition that they were too busy to handle much more civil rights work, particularly in outlying parishes (Government Exhibit #8, pp. 45-46). Collins, Douglas & Elie have had to turn away civil rights cases because the firm was too overburdened to handle them. (Tr. I, 98; II, 33-34; III, 122-123.) So have the Negro lawyers in the parishes. (Government Exhibit #13, pp. 26-28; Government

Exhibit #15, 40-42, 45-49.) The tiredness of the few was cogently expressed in Mr. Johnnie A. Jones' testimony:

> "For instance, since the passage of the Civil Rights Act I want to go and make some money and maybe the rest of us who have been working in the Civil Rights area now want to make some money. It is not a paying practice and we are getting old on the job. It is really for somebody just starting off to get some experience. (Tr. IX, 13.)[68]

3. Availability of White Attorneys Licensed in Louisiana.

White Louisiana attorneys simply do not handle civil rights cases. That conclusion is inescapable on this record. If it were untrue, we would suppose that the combined resources of defendants Leander Perez, Sr., Leander Perez, Jr., the State of Louisiana, the Louisiana State Bar Association and the Criminal Court Bar could have disproved it. What those combined resources have in fact produced is exactly thirteen living white Louisiana lawyers who have handled even one civil rights case.

Plaintiffs' witnesses, Ben Smith and Jack Nelson, have, of course, handled civil rights cases.[69] Jack Peebles, who testified for the Government, has.[70]

68/ The effect of the paucity of Negro attorneys is somewhat more subtle than the raw question whether there is not a Negro lawyer available at a given time. The Negro community, like the white, has its ideological divisions; and, where there is only one Negro attorney or two in a large region of the State, the effect of a division of this sort may leave a large and active segment of the community unserved. (Tr. IV, 85-86, 91-92.)

69/ Benjamin E. Smith's testimony is at Tr. II, 133-193. References to him in the testimony of others are found at Tr. III, 78; IV, 195-196; VII, 27-29, 117-118; IX, 16. John P. Nelson's testimony is at Tr. II, 193-III, 94. References to him in the testimony of others are found at Tr. I, 65-66, 80, 137; II, 145; III, 93; IV, 195; VII, 207; VIII, 27-29, 141; IX, 16.

70/ Jack Peebles' testimony is at Tr. V, 180-213.

Paul Kidd, a young white attorney who is presently the object of brutal harassment in Ruston, Louisiana, has courageously handled some cases.[71] Donald Juneau and Robert Roberts, L. C. D. C.'s two very young Louisiana-licensed staff lawyers have. (Juneau and Roberts, however, have both told Mr. Sobol that the reason they feel free to work for L. C. D. C. is that they do not intend to remain in Louisiana after they leave the Committee. (Tr. V, 107.)) With these half-dozen exceptions, we are unable to find in the nine days of trial testimony or hundreds of pages of depositions herein any suggestion that any other white Louisiana lawyer has handled more than a couple of short-lived civil rights cases. The additional seven attorneys who have handled a couple are collected in the footnote.[72]

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[71] Mr. Kidd's deposition is Government Exhibit #17. Concerning the harassment, see pp. 9-16, 40-42.

[72] (1) Mr. Edward Baldwin, a witness herein (Tr. VII, 4-15), was associated with Mr. Leon Hubert in the Dombrowski case. The case was handled by Mr. Hubert's and Mr. Baldwin's firm for a $6,000 fee (Tr. VII, 14), and a major role was played in the case by out-of-state counsel, Mr. Arthur Kinoy of New York (Tr. II, 187-188; VII, 7-8.) (We note the fee only because it is plainly beyond the reach of the ordinary civil rights client. See subsection (E)(4)(a) infra.) Other than Dombrowski, Mr. Baldwin has never handled a civil rights case. (Tr. VII, 11-12.) (2) Mr. John P. Dowling, counsel for the Criminal Court Bar, was also a witness herein. (Tr. IX, 53-77.) We find in his testimony specific reference to only three civil rights cases that he has handled: a hospital desegregation case, a City Hall cafeteria desegregation case, and a criminal miscegenation case. The hospital case, which he handled in association with Mr. Victor LeBeau, A. C. L. U. Staff Counsel, now deceased, is mentioned elsewhere in the record at Tr. III, 42; VIII, 122, and is described more fully in note 15 supra. In the cafeteria case, Mr. Dowling was associated with Collins, Douglas & Elie. (Tr. I, 66.) (3) As indicated above, Mr. Leon Hubert hand-

The several defendants herein also produced almost a score of white Louisiana lawyers who, as witnesses, testified that they would handle civil rights cases. Many of these witnesses qualified or limited their willingness in some significant way.[73] None of them ever had handled a civil rights case.

Footnote 72, continued/

led the Dombrowski case, together with Mr. Arthur Kinoy of New York. (Tr. II, 180, 187-188.) (4) Mr. Walter Kelly, another counsel for the Criminal Court Bar and another witness herein (Tr. IX, 80-90), handled two civil rights cases. (See also Tr. VIII, 122-123.) (5) Mr. Stephen R. Perez (Tr. VII, 156-163), handled the Juanita Brown case (Defendants' Exhibit #14). (6) Mr. Bruce Walzer, while Ben Smith's partner, handled a few civil rights matters. (Tr. II, 145; VII, 118; IX, 16.) (7) Mr. Monk Zelden, a witness (Tr. IV, 3-47), is said to have handled a case for the Ducassan brothers, to determine whether they were white or Negro (Tr. III, 83-84.) Mr. Zelden's testimony is plain that, other than the Ducassan case (if that was a civil rights case), he has handled no civil rights cases. (Tr. IV, 26-28, 32-33.) In addition to these seven attorneys, Mr. William F. Wessel, the third testifying counsel for the Criminal Court Bar, indicated that he thought he had heard that Mr. Dan Spencer had handled civil rights cases, but was not sure. (Tr. VIII, 117-118.) Mr. Wessel himself went to Mississippi, with a group of attorneys from various states organized by Ben Smith, in connection with the Challenge. But he has never handled a civil rights case in Louisiana. (Tr. VIII, 116-117.)

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The following attorneys testified that they would handle criminal cases arising in a civil rights context on behalf of a Negro defendant: Joseph E. Defly, Jr., Ralph L. Barnett, Emile Martin III, Thomas McBride (for local Negroes only; "I am a white man first and foremost," Tr. VI, 188); William Morgan III, G. Wray Gill, Nathan Greenberg, Bernard Horton, Edward A. Wallace, George Ehmig, Floyd Reed, Gilbert Audry, Jerald Audry (by stipulation); Rudolph Becker III (by stipulation). They did not testify that they would handle affirmative civil rights matters; indeed, Defly said that he would not, and Martin that he would hestitate to do so (Tr. VI, 156-159, 174-176, 180.) George M. Leppert, William F. Wessel III, John J. Cummings III, and I. G. Kiefer testified that they would handle civil rights matters generally. In addition, the following attorneys named in footnote 72, supra, so testified: Sam Monk Zelden, Jack Peebles, Edward Baldwin, Stephen R. Perez, John Dowling and Walter Kelly.

Of these men, the following apparently would handle such cases only for a fee or by court appointment, however: Defly, McBride, Morgan (together with Becker, by stipulation), Baldwin, Greenberg, Horton, Wallace, and Perez. Zelden would handle an unappointed, non-fee case only on personal request, such as that of a friend; and Peebles would take only a limited number of such cases, under A. C. L. U. auspices.

Mr. Joseph E. Defly, Jr., and Mr. Emile Martin, III, of Plaquemines Parish, knew of no white lawyer in that Parish who had. (Tr. VI, 150; VI, 176-177.) Mr. Ralph R. Barnett, of Jefferson Parish, knew of no white lawyer in Jefferson who had. (Tr. VI, 167.) Mr. Sam Monk Zelden, a widely practiced attorney with exceedingly broad acquaintance at the bar, was unable to name a single white Louisiana lawyer in the State who had. (Tr. IV, 26-29.) The others of these attorneys who were asked that question could name only one or another of the usual two— Ben Smith and Jack Nelson. (Tr. VII, 207; VIII, 141.) (See also the testimony of Mr. Johnnie A. Jones, Tr. IX, 16 (Smith, Nelson, Walzer); and the testimony of Mr. William F. Wessel, Tr. VIII, 113, 117-118, 122-123 (Smith, Nelson, Kelly)— Messrs. Walzer and Kelly having been counted heretofore in footnote 72, supra.) The testimony of the Honorable Bernard J. Bagert, Presiding Judge of the Criminal District Court for the Parish of Orleans, therefore, holds no surprises. Many Louisiana attorneys represent criminal defendants— including Negro criminal defendants— capably and with dedication in ordinary criminal matters. (Tr. VIII, 4-7, 9-10, 22-24.) As for civil rights cases, and experience in civil rights law:

> "There are a few white lawyers that do a lot of Civil Rights work, and that I know. For example, Mr. John Nelson's firm, and Mr. Ben Smith's firm, and Mr. Jack Peebles, and also a few others like that, but not many more.
>
> ". . . . . .
>
> ". . . the lawyers that I have talked with on various aspects of the criminal activities had never gone in the Civil Rights features."
> (Tr. VIII, 27-28.)

The foregoing evidence of the extent of involvement by white Louisiana attorneys in civil rights cases, presented entirely by the witnesses for the defensive parties in this lawsuit, amply proves plaintiffs' basic factual contention. With exceptions whose gallantry is matched only by their anomaly, the white bar has not handled and does not handle these cases. If further proof were needed, this record contains it:

(1) A study made by Plaintiff Richard Sobol, and under his supervision by his staff attorneys, examined every civil rights case (as defined in subsection (D) (1) supra) reported in the Race Relations Law Reporter between January 1, 1958 and the latest volume of that publication (1967, Volume 2). For every Louisiana case, the identity of counsel for the civil rights claimant was determined through published reports of the West system and by direct inquiries of the appropriate clerks of court. During the period covered, there were 139 Louisiana civil rights cases. Thirty-nine were Government cases, and 100 were private lawsuits. Of the 100 private lawsuits, three involved any Louisiana-licensed lawyers other than Ben Smith, Jack Nelson and Negro attorneys: one criminal miscegenation case arising in Avoyelles Parish in 1961; one suit by a Negro school teacher in Baton Rouge challenging his dismissal from an all-Negro school as racially motivated; and the Dombrowski case. (Tr. IV, 176-178.) Since the sources of this startling study are public, we assume that any errors would have been brought to the Court's attention by the defendants during the two weeks of trial that followed its presentation.

(2) The Louisiana affiliate of the American Civil Liberties Union (A. C. L. U.) handles, among other sorts of cases, civil rights cases. It draws "upon any /Louisiana attorneys/ that we can get" to handle these cases (Tr. V, 194) and is "in the process of soliciting lawyers all of the time to take these cases... after we feel that there was some validity to /the case/" (Tr. II, 154). At most, fifteen Louisiana attorneys have been willing to handle A. C. L. U. cases (including civil liberties cases that are not civil rights matters). (Tr. II, 154.) There are presently only about seven attorneys actively handling cases for the A. C. L. U. (Tr. V, 193-195); and, of the seven, Lolis Elie, Nils Douglas and perhaps others are Negro (Tr. V, 197-198.)

When the present Chairman of the Legal Committee of the A. C. L. U. of Louisiana assumed that office in October, 1967, he attempted to increase the involvement of the attorneys in the New Orleans area. For this purpose, he mailed out to the first 500 New Orleans attorneys listed alphabetically in the phone book a letter and attachments inquiring whether they would be interested in volunteering to handle various sorts of A. C. L. U. cases. A form return was provided. Assurance was given that autonomy in the handling of cases by volunteer lawyers would be preserved. One of the categories of cases identified as within A. C. L. U.'s concern was "racial equality under law." (Government Exhibit #7.) About a dozen of these letters were returned to the A. C. L. U. as mis-addressed. (Tr. V, 191.) To the remainder of the 500, there was not a single reply. (Tr. V, 180-191, 214-217.)

(3) Specific instances of refusals by white attorneys to accept civil rights cases have been proved, and the bases offered for their refusals supports the conclusion that the phenomenon is widespread. In 1966, Mr. Zelma Wyche attempted to get two of the six or seven white lawyers in Madison Parish to represent him in a civil rights case. Mr. Wyche had appeared before the Court on so many occasions represented by out-of-state lawyers (see subsection (A) (5)(d)(ii) supra), that the Judge advised him to try to seek out local counsel. At the Judge's suggestion that he ask Mr. Bud Seal and Mr. George Spencer for assistance, he went to these two white attorneys. Both declined to represent him. Mr. Seal said that the townspeople would kill him if he drew up papers for the Madison Voters League. Mr. Spencer said that his practice in Tallulah would be killed if he defended Mr. Wyche in a criminal case arising out of a public accommodations test. (Tr. III, 159-162.) Since these two occurrences, Mr. Wyche has not sought out local white lawyers to handle civil rights cases because "I believe it's useless to try." (Tr. III, 176.)

The Southern Consumers' Cooperative in Lafayette Parish (see subsection (A) (5)(d)(iii) supra) had been able to secure the services of local white attorneys in non-controversial "regular legal work," such as incorporating the organization and representing it in contract matters. When the Coop's offices were raided by the District Attorney in April, 1967, however, the organization was unable to get those or other white lawyers to handle the case. One, who would not return the

organization's phone calls to his office, "later on... said he would not handle it because it was too hot." (Tr. IV, 74-78.)

(4) In the Parishes outside the New Orleans area, it is the experience of attorneys known to handle civil rights cases that clients will come to them from considerable distances in such cases, asserting that they have been unable to get lawyer's nearer home. (Government Exhibit #13, pp. 32-38; Government Exhibit #17, pp. 43, 49-52, 85-87.) This is also the experience of Collins, Douglas & Elie. (Tr. I, 97-98; and see Tr. IV, 194-196.) The civil rights lawyers in the outlying parishes who were deposed in this case— consisting exclusively of Negro attorneys, with the exception of Paul Kidd in Ruston— unanimously concluded, on the basis of their experience, that Louisiana Negroes are unable to secure adequate local representation in civil rights matters. (Government Exhibit #13, pp. 59-61, 105-106; Government Exhibit #14, pp. 19-20; Government Exhibit #15, p. 49; Government Exhibit #16, pp. 47-48.) This was also the opinion of Mr. A. P. Tureaud on his deposition (Government Exhibit #8. pp. 53-54), and of the several knowledgable witnesses for the plaintiffs who testified at the trial: Lolis Elie (Tr. I, 67-68, 79-80, 94-98); Ben Smith (Tr. II, 139-140, 152-153, 158-160, 172, 183-185) and Jack Nelson (Tr. II, 200; III,

74/
30-34, 83, 87-88). On cross-examination, Mr. Smith summed it up:

> "Let me try to give you an answer; I would say that most lawyers, most members of the Louisiana State Bar that want to take criminal work, will, and I believe they would raise Constitutional defenses in criminal cases.
>
> "I also find that in most of my experience that most lawyers in the State of Louisiana will not touch these hot Civil Rights type cases involving movements, that sort of situation, that is, agitation, or demonstrations, desegregation cases, voter registration drives. Those are civil demonstration cases, and it is going to cost them a lot in their reputation among their friends and their rural area. And, they are practical minded men, and they are generally not in sympathy, anyway, with it, and I just think that I am not being unfair to them— they just haven't been around taking those kinds of cases." (Tr. II, 183.)

(5) Not surprisingly, the testimony of defense witnesses supports Mr. Smith's conclusions. Mr. Emile Martin III, an attorney practicing in Plaquemines Parish, testified that he would very much hesitate to handle a school desegregation or other unpopular affirmative civil rights suit in the parish, because it would jeopardize his practice. (Tr. VI, 174-176.) He estimated that the effect on his practice of handling such a case might be greater even than the 80% loss of income which resulted from his running for political office against the incumbent Plaquemines administration. (Tr. VI, 180.) /

74/ Some of defendants' witnesses voiced a contrary opinion, principally Mr. William F. Wessel (Tr. VIII, 111, 113), whose contact with civil rights matters and clients has been too limited to support any opinion on the subject (See note 71 supra.) Mr. Bascomb Talley was of the view that the Negroes arrested in the Bogalusa mass arrests could have gotten adequate local representation (Tr. VIII, 46, 52); but he admitted that he himself would probably not have represented them (Tr. VIII, 63), and he declined to name any specific Bogalusa lawyer who would (Tr. VIII, 63-64).

Mr. Joseph E. Defly, Jr., of the same parish, said flatly that he "wouldn't handle a suit to desegregate the school or the library, or anything else. I think any lawyer down there that did, would be a darn fool." (Tr. VI, 156-157.) He "would have to give up his other practice," and "if he didn't give it up, I am sure that a lot of people would take their business away from him if he became involved in something like that." (Tr. VI, 157.)

We submit that, not only is this testimony credible and confirmative of Mr. Smith's explanation of the failure of white Louisiana lawyers to handle civil rights matters, but also that this Court can judicially notice what Mr. Jack Nelson described as "the facts of life." (Tr. III, 61-62.) Those facts, which are developed further in the following subsection, compel the inference that the refusals of white lawyers to handle civil rights matters, proved in this record, are not merely isolated incidents, but the natural and characteristic manifestations of a State-wide condition.

4. Factors Inhibiting the Availability of Locally Licensed Attorneys.

Defendants would have this Court believe that the reason only about a dozen Louisiana white attorneys have ever handled a civil rights case is that the rest have not been asked. As the evidence described immediately above shows, others have been asked and have refused, giving reasons which support the conclusion that they would refuse if asked again. As a result, we are quick to concede, both Negro civil rights clients and Negro attorneys trying to broaden the base of legal services have been discouraged from asking. (See the testimony of Mr. Zelma Wyche (Tr. III, 176), and of Mr. Lolis Elie (Tr. I, 67-68, 80).) Other factors also contribute to this discouragement and to the general lack of confidence of Negroes having civil rights problems in white Louisiana lawyers, documented in subsection (d) below.

But the defendants deny that such a lack of confidence exists, and assert that the reason white Louisiana lawyers are not more frequently asked to take these cases is either mere happenstance or because civil rights problems (including mass arrests) are "staged" affairs, promoted by civil rights groups who have previously arranged their handling by "house counsel." The first of these suppositions is preposterous, and nothing in this record supports the second except the testimony of defense counsel, Mr. John P. Dowling, that it is so. (Tr. IX, 58-62.) Since Mr. Dowling has had very

little contact with civil rights matters, staged or unstaged, his opinion is equally little help to the Court. This was established on cross examination, when Mr. Dowling conceded that the only objective basis for his views was an inference from the fact--proved overwhelmingly by the plaintiffs--that the same few civil rights attorneys (almost exclusively Negro) handle all the civil rights cases in Louisiana. (Tr. IX, 70-77.)

We suggest that the causes of that phenomenon are somewhat more complex, and that several demonstrated factors severely inhibit Louisiana-licensed attorneys, white or Negro, from handling civil rights matters. Because these are fairly obvious, we state them summarily. Each is firmly established by the evidence cited.

a. Financial Factors.

The evidence is overwhelming that the handling of civil rights cases "is not a paying practice." (Tr. IX, 13.) None of the lawyers who have taken such cases (except highly atypical affairs like the Dombrowski case) have made any money in them.[75] In addition, handling civil rights matters tends to chase away paying business. (Tr. II, 56-57, 196-197; VI, 156-157, 174-180.) This is so both because a lawyer who handles a civil rights case is sufficiently unusual that he gets a reputation as a civil rights lawyer,

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[75] See the testimony of Mr. Lolis Elie (Tr. I, 68-69, 77, 132-133, 140-141); Mr. A.P. Tureaud (Tr. VI, 34); Mr. Johnnie A. Jones (Tr. IX, 12-15); Mr. Ben Smith (Tr.II, 189-190); Mr. Jack Nelson (Tr. III, 33-37, 53-54); Mr. Jack Peebles (Tr. V,205) and see Government Exhibits #13-17, cited infra.

with the result that potential clients do not think of him in other connections (Government Exhibit #13, 59-63; Government Exhibit #15, 27-28, 45); and because the controversial nature of a civil rights lawyer causes prudent clients to avoid him as the spokesman of their non-controversial interests (Tr. II, 56-57; Government Exhibit #13, pp. 60-61; Government Exhibit #14, pp. 20-23). The result of these several circumstances is evident. As a result of handling a large volume of civil rights matters, Ben Smith's law firm "faced a financial crisis" in 1966 and the partnership broke up. (Tr. II, 190.) (It is significant that Jack Nelson's former law firm also "disbanded because of the Tulane case" (Tr. II, 190.); thus, the two white attorneys in the state who have significantly engaged in these matters underwent the same fate. And see the deposition of Mr. Paul Kidd, Government Exhibit #17, pp. 48-49.) Finally, it is a palpable enough fact , not unique to Louisiana, that a lawyer's time spent on non-paying matters cannot be spent on paying matters. Numerous of the defendants' witnesses who "would" handle civil rights matters accordingly conceded that they would do so only for a fee, or by court appointment. (See note 73, supra.)

In the latter connection, it is significant to note that virtually all criminal cases arising out of civil rights activity are misdemeanor charges. (Tr. I, 98; III, 91; IV, 175-176; V, 96-97.) Notwithstanding the settled federal

constitutional law of this circuit,[76] Louisiana state courts, with rare exceptions, do not appoint counsel for indigent defendants in misdemeanor matters.[77] Most defendants in these civil rights misdemeanor cases are indigents (Tr. II, 189; Tr. IV, 140-141.), and those with a little money find themselves limited to lawyers practicing in the immediate geographic area of their arrests. For, as one New Orleans lawyer testifying for the defense put it, "to compensate me for leaving the city of New Orleans would become prohibitive for an individual client to pay me the necessary fee to go." (Tr. VII, 63; see also Tr. III, 26-27; VII, 54-56.) It should be further noted that, when appointment of counsel is made, no provision is made for the payment of counsel's expenses or for investigation. (Tr. VI, 169; VII, 64, 151; VIII, 19-21, 31-33.)

Apart from court appointments, the state of legal aid

76/ Harvey v. Mississippi, 340 F.2d 263 (5th Cir. 1965); McDonald v. Moore, 353 F.2d 106 (5th Cir. 1965).

77/ See Louisiana Code of Criminal Procedure, Art. 513 and Comment; Tr. V, 96-97; VI, 59-60, 169; VII, 151-152. In Orleans Parish, counsel are generally but not invariably appointed in indigent misdemeanor matters. (Tr. VIII, 21-22.) In other, larger cities, they are appointed for serious but not for lesser misdemeanors; while in the rural parishes, they are not appointed in any misdemeanor cases. (Tr. VI, 59-60.) This may explain why 85% of Negro defendants charged with criminal offenses in Plaquemines Parish during the years studied in Defendants' Exhibit #5—which includes both felony and misdemeanor matters-were unrepresented. (Tr. VI, 123-126.)

in Louisiana is best described as rudimentary. Five O.E.O. offices are operational in the State, two of these (New Orleans and Tallulah) just beginning. Each services, at best, its own Parish. (Tr. VI, 38-39, 46-52; Government Exhibit #11.) Assuming even the requisite congressional appropriations, the establishment of additional O.E.O. programs in Louisiana is impeded by the prospect of hassles with the Louisiana State Bar Association, which--although approving O.E.O. legal services in principal--takes a stand on such questions as lay control which makes compliance with O.E.O. organizational requirements exceedingly difficult. (Tr. III, 62, 64-74; VIII, 163-185; and see Government Exhibit #12 with regard to difficulties in establishing the Tallulah program.)[78] Under the December, 1967, O.E.O. amendments, O.E.O. offices will henceforth be prohibited, in any event, from handling criminal matters, including misdemeanors. (Tr. VI, 71.) The Louisiana State Bar Association has not itself maintained any state-wide legal aid program, but has left such matters to the local bar associations (Tr. VIII, 160-163), such as the New Orleans Bar Association, which excludes Negro attorneys (Tr. I, 58; III, 22, 24, 48; VIII, 185-186; IX, 87).

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[78] It seems to us irrelevant whether the Bar Association is right-headed or wrong-headed in its position on N.O.L.A.C., just as it is irrelevant whether the Association is less than reasonable when it refuses the use of its membership lists to such strictly legal public-service operations as an A.C.L.U. volunteer-solicitation drive. (Tr. V., 184-187, 201-204; VII, 227-230.) Plainly, these are decisions the Association could make either way, and the effect of the ways it has made them is to make more difficult the achievement of programs which might provide legal services to the poor.

b. Harassment of, and Social Pressures upon, Attorneys Who Handle Civil Rights Cases.

It is hardly subject to doubt, on this record, that a significant part of the white community in Louisiana, particularly in rural Louisiana, remains intensely hostile to the advancement of equal rights for Negroes. Testimony relative to specific events - such as Klan harassment of the Bogalusa Voters League (Tr. III, 96-115), brick-throwings and cross-burnings directed at the moderate whites in Bogalusa (Tr. VIII, 52-55), the bombing of the Collins, Douglas & Elie office (Tr. I, 106), Judge Rarick's threats to Mr. Elie in Clinton (Tr. I, 107); and see particularly the deposition of Mr. Paul Kidd in Ruston (Government Exhibit #17, pp. 9-16, 40-42); punctuate and support the opinion testimony of every informed witness in the trial that this is so.[79/] It is also plain enough that this hostility frequently dominates the counsels of local government, what Mr. Ben Smith called the "power structures in rural areas in the state, ... law enforcement officials, those persons who have money and dispense jobs and economic opportunity in rural areas ...." (Tr. II, 143.) Again, testimony in the record - the raid on the Southern Consumers' Cooperative, "Bloody Wednesday" in Bogalusa, the attitudes

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79/ Mr. Lolis Elie (Tr. I, 119); Mr. Benjamin E. Smith (Tr. II, 143, 187); Mr. John P. Nelson (Tr. II, 196-200); Mr. Richard B. Sobol (Tr. IV, 173-174).

reflected in the depositions of Defendants Leander Perez, Jr., and Leander Perez, Sr.[80] etc. - together with the judicially noticeable proceedings in which this and other courts, at the instance of the L.C.D.C., have given relief against official repression of civil rights activities (see subsection (A) (5) (d) supra), compels this conclusion.

The consequences of this hostility impose a "fantastic amount of pressure" (Tr. III, 13) on the attorney who handles civil rights matters.[81] "Practicing Civil Rights law in rural places is - well, part of what you do is that you expose yourself to just incredible intensity of hostility, and that is just part of going to these places. And it is in trying every case, and every conference, there is some of it in greater or lesser degree." (Tr. IV, 174.) The effect upon willingness of Louisiana-licensed lawyers to handle civil rights cases has been described by one who has felt it, Mr. Jack Nelson, as "devastating." (Tr. II, 200.) Some attorneys admit they will not handle civil rights matters on account of it. (Tr. VI, 156-157, 174-180.) Others quietly attempt to have Negro civil rights attorneys bring suits

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80/ Plaintiffs' Exhibit #3, pp. 37-63, 76-70, 83-89, 92, 95-105; Plaintiffs' Exhibit #5, pp. 38, 45-50.

81/ The pressure is evidenced in small as well as large matters, such as Mr. Bascomb Talley's unwillingness to greet Negro attorneys publicly in Bogalusa at the height of the crisis there. (Tr. I, 94-95, corroborated in substance by Mr. Talley at Tr. VIII, 47-51.)

that they themselves are afraid to bring. (Tr. I, 67-68.) Mr. Nelson will handle such cases himself, but will not permit his partners to handle them. (Tr. III, 39-40.) The representations of L.C.D.C.'s two young, Louisiana-licensed attorneys that they feel free to work for the organization only because they do not intend to continue to practice in the State have already been noted. (Tr. V, 107.)

Moreover, major and minor physical harassments of civil rights lawyers - abusive phone calls, unjustified police stops, face-to-face threats of violence - are frequent. The record is full of episodes that need not be detailed here. (Tr. I, 106-110, 165, 227; II, 54-55, 137, 176-177, 195-196; IV, 173-174; Government Exhibit #13, pp. 49-52; Government Exhibit #14, p. 27; Government Exhibit #17, 9-16, 40-42.) Two specific incidents in Plaquemines Parish prior to Mr. Sobol's arrest are described in subsection (G) (2) infra. These are placed in context by the testimony of Defendant Leander Perez, Sr., in his deposition:

> "So, if you are a member, for instance, of the American Civil Liberties League or of any Communist organization, regardless of whether the Federal Government attempts to protect you, we would make it very inconvenient for you in the Parish of Plaquemines." (Plaintiffs' Exhibit #3, p. 37.)

c. Lack of Confidence in White Louisiana Lawyers by Negroes in Civil Rights Matters.

The failure of white Louisiana-licensed attorneys to handle civil rights matters over many years, and the

hostility of significant parts of the white community and the white "power structures" to civil rights activities have had their effects on Negro attitudes. Negroes now do not trust white, locally licensed attorneys in this State to handle their civil rights matters. The proof on this point is overwhelming. Defendants' own explanation of the incredibly few civil rights matters handled by local white lawyers - that Negroes do not go to white lawyers with such matters - merely recognizes the truth of the point.

The only clients who testified in this trial full of lawyer witnesses - Mr. A. Z. Young, Mr. Zelma Wyche, Father Albert McKnight and Gary Duncan - each said plainly, forcefully and unshakably that they did not trust white Louisiana attorneys to handle their controversial or civil rights cases. (Tr. III, 102-103, 121, 175-176, 201-202; IV, 78-82.)[82] The only lawyers testifying who had had anything to do with Negroes engaged in civil rights activity or civil rights litigation gave it as their unanimous opinion, based on many conversations with these clients, that Negroes generally do not trust white Louisiana lawyers in such cases:

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[82] We hardly need waste time with the absurd proposition, suggested by some of the defensive questioning at depositions and at the trial, that Negroes must trust white lawyers in civil rights cases, since they trust Mr. Sobol. The short answer is that given to such questioning by Negro attorney Marion White: "I say that Negroes generally don't have confidence in white lawyers, but they do have confidence in some white lawyers handling civil rights cases when those white lawyers have proven themselves to be actually interested in the civil rights cause...." Government Exhibit #13, p. 87.

Mr. Lolis E. Elie (Tr. I, 116, 185); Mr. Robert F. Collins Tr. II, 68); Mr. Benjamin E. Smith (Tr. II, 139-140, 152); Mr. John P. Nelson (Tr. II, 197-199; III, 17, 78); Mr. Richard Sobol (Tr. IV, 142-143); Mr. Marion O. White (Government Exhibit #13, pp. 77-78); Mr. Louis Berry (Government Exhibit #15, pp. 39-40, 53-54); Mr. James Sharp (Government Exhibit #16, pp. 41-42); Mr. A. P. Tureaud (Government Exhibit #8, p. 48). Defendants' lawyer witnesses who testified to contrary opinions had - none of them - the slightest contact with Negroes in civil rights matters, and therefore not the slightest basis for the opinions. This was admitted by the more candid of them. (E.g., Judge Bagert, at Tr. VIII, 25.)

We might add (although it seems obvious) that the suggestion sometimes voiced by the defendants, that Negro lack of confidence in white Louisiana lawyers to handle their civil rights matters is "inculcated" by L.C.D.C. and the civil civil rights lawyers groups, is an unsupported canard. The only evidential basis for that suggestion is the opinion of Mr. Sam Monk Zelden, responsive to a leading question. (Tr. IV, 15.) Mr. Zelden further denied that Negroes <u>did</u> distrust local white attorneys; and his opinion concerning "inculcation" appears to have been reached notwithstanding he has had no contact either with Negroes active in civil rights <u>or</u> with the civil rights lawyers' groups. The testimony of Mr. A. P.

Tureaud (Tr. VI, 56) and of Mr. John P. Nelson (Tr. III, 79-80) is that, far from inculcating distrust in local white attorneys, the civil rights lawyers' groups do everything possible to bridge the gap between the Negro civil rights community and the local white bar. Mr. Sobol testified that this purpose was paramount in his employment of two white Louisiana attorneys as L.C.D.C. staff counsel. (Tr. IV, 193-194.) And we refer the court to Plaintiffs' Exhibit #22 (p. 10, pr 1), an L.C.D.C. document drawn up long before Mr. Sobol's arrest or this lawsuit, for the general L.C.D.C. attitude on the subject:

> "In addition, we have begun to receive inquiries from local white lawyers on behalf of their clients, asking us to help in raising various constitutional questions. In a few cases we have been able to prevail upon local white lawyers to assist or work with us on our cases in this area. In many respects, this is one of the most important elements and results of our work in the South."

F. The Role of Out-of-State Attorneys

1. The Involvement of, and Need for, Out-of-State Attorneys in Civil Rights Matters.

Since the inception of significant civil rights legislation in Louisiana, out-of-state attorneys have played a major role in it. The bulk of such litigation has been handled locally by Negro attorneys.[83] Every Louisiana Negro attorney who testified or was deposed to having handled any considerable volume of civil rights cases also testified to a practice of extensively associating out-of-state counsel in those cases. (Tr.I, 65, 184, 229; II, 53; IX, 11-16, 24-25; Government Exhibit #8, pp.65-66, 77-80; Government Exhibit #13, pp.39-40, 70-71, 73; Government Exhibit #15, p.52; Government Exhibit #16, pp.36-39.) Estimates of the proportion of civil rights cases in which out-of-state counsel were involved ran very high. (See Tr. I, 65 (95%); II, 53 (same); Government Exhibit #13, p. 73 (75-80%).) To a man, the Negro attorneys agreed that they could not physically and financially have handled the civil rights cases which they have handled without the association of the out-of-state lawyers. (Tr. I, 229; IX, 15-16; Government Exhibit #8, pp.58-59; Government Exhibit #13, p.73; Government Exhibit #15, p.52; Government Exhibit # 16, pp. 36-39.) For these reasons,

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[83] See subsections (E) (2), (3) supra.

Mr. Robert Collins' testimony is credible that it is "almost mandatory that [Collins, Douglas & Elie]... be associated with out-of-state counsel in order to effectively handle Civil Rights work..." (Tr. I, 229.) Because of the dearth of Louisiana-licensed attorneys available for such work (see section E, supra) -- and in light of the large volume of civil rights work which in fact is done in Louisiana only with the assistance of out-of-state lawyers (supra, this subsection), including those of the L.C.D.C. (subsection (A) (5) (d) supra) -- it also appears that any significant impairment of the practice of associating out-of-state lawyers with local counsel in civil rights cases would result in a comensurately significant impairment of the representation available to persons having federal civil rights claims. Specifically, the restriction of L.C.D.C.'s practice, as it has heretofore been carried on in association with Collins, Douglas & Elie, would sharply curtail the amount of litigation maintained on behalf of Negroes in the State of Louisiana to vindicate their federal civil rights, and hence would obstruct the

vindication of their rights.[84/]

2. The Interest of the State of Louisiana in Restricting the Association of Out-of-State Attorneys in Civil Rights Cases in the State.

The State of Louisiana has had no significant problems connected with out-of-state attorneys practicing in the State in association with Louisiana-licensed attorneys. The matter has been of little concern to the State Bar Association Committee having jurisdiction over it, because the activities of out-of-state lawyers in Louisiana have not appeared to threaten any harm to the profession of law or to clients in the State. This is the opinion of the chairman of the cognizant committee, and of the Executive Counsel of the Louisiana State Bar Association alike.

84/ This ultimate finding is inferred from the preceding findings in the subsection, and is also supported directly by the opinion testimony of Mr. Benjamin E. Smith (Tr.II, 142-144, 156-157, 175) and Mr. John P. Nelson (Tr. II, 201-203).

We have not asked the Court to make any findings based upon the DeVito Study (Tr. II, 101-125, Plaintiffs' Exhibit #26). Because of the imprecision involved in any study of the sort, it is at best a very approximative measure of the degree of involvement of out-of-state attorneys in civil rights cases. We do think, however, that as such an approximative measure, it is informative, both as showing the pattern of geographic distribution of such involvement, and as showing its evolution. Compared to other parts of the country, the States in the Fifth Circuit have particularly significant participation by out-of-state counsel in civil rights matters; and this increased markedly from 1957 to 1966 leveling off at that point (possibly because, under the system of classification used by Professor DeVito, most L.C.D.C. cases would appear in his tables as not involving out-of-state lawyers).

(Tr. VII, 216-223; VIII, 202-205.) L.S.A. - R.S. §§ 213-214 have not heretofore been thought to impose any strict of precise time limitation on the duration of an out-of-state attorney's association with local counsel within the proviso of the latter section. (Plaintiffs' Exhibit # 29, Letter, Edward F. Gliesman to Sidney Provensal, June 12, 1967.)

G. The Chilling Effect of the Sobol Prosecution

1. Effect on Plaintiff Richard B. Sobol. [Note: This Part A(1) is based on entirely uncontroverted evidence.]

Prior to Plaintiff Sobol's arrest on February 21, 1967 in Plaquemines Parish, and to the prosecution arising out of that arrest, he had appeared in matters in the state courts of Louisiana in association with Collins, Douglas & Elie, physically unaccompanied by his local associates. (Tr. IV, 131-134, 170, 211-212; V, 43-45.) He was permitted to so appear both in the City Court of Bogalusa and in the Sixth Judicial District Court, whose jurisdiction covers Madison Parish. (Ibid.)

Two days after the filing of the information against Mr. Sobol and his arrest, the defendant, Leander Perez, Jr., sent copies of that information to the district attorneys of the Sixth Judicial District and of the Twenty-Second Judicial District (which covers Bogalusa), as well as to several other district attorneys in the State. (Tr. IV, 95-96.) His letters transmitting the information recited that Mr. Sobol was not licensed to practice in Louisiana; that Mr. Perez understood Sobol had practiced in the addressee's district, representing C.O.R.E. and individuals through the L.C.D.C.; and that Mr. Perez submitted "this to you for your consideration." (Plaintiffs' Exhibit #27, form letter of Leander Perez, Jr., February 23, 1967.) Mr. Perez received an immediate reply from Woodrow W. Erwin, District Attorney for the Twenty-Second Judicial District, saying that Sobol had indeed appeared in his district; that

Mr. Erwin had thought of raising the question of his right to practice; but that, after Sobol had been admitted to the bar of the federal courts, Mr. Erwin did not know how far a prosecution of him would go. He closed by pledging Mr. Perez his "wholehearted support." (Plaintiffs' Exhibit #27, Letter, Woodrow W. Erwin to Leander Perez, Jr., February 27, 1967.)

The same day, Mr. Erwin wrote to Mr. Robert Collins stating that, in light of Sobol's prosecution in Plaquemines, he was afraid that the question of Sobol's right to practice in the State courts would also be raised in the Twenty-Second Judicial District if Sobol appeared there again. He therefore asked that Collins henceforth send to that district a person fully qualified to practice in the state courts. (Tr. I, 113; Plaintiffs' Exhibit #2, Letter, Woodrow W. Erwin to Robert F. Collins, February 27, 1967.)

Subsequently, Thompson Clarke, the District Attorney for the Sixth Judicial District, told Mr. Sobol orally that Sobol would not again be permitted to appear in that district. Recognizing that Judge Adams of the Sixth Judicial District Court had previously allowed appearances by Mr. Sobol, physically alone, the District Attorney took the view that the Plaquemines Parish arrest "changed the picture", and that Mr. Sobol "should not come back." (Tr. IV, 171-172.)

In addition, Mr. Sobol, following his arrest, received a phone call from the City Attorney of Homer, Louisiana, who was also counsel for a hospital in Claiborne Parish that had been ordered to desegregate. The occasion of the

call was an investigation by an L.C.D.C. volunteer attorney, dispatched by Mr. Sobol, to determine the extent of the hospital's compliance with the order. Soon thereafter, the City Attorney called Mr. Sobol and told him that he did not want Sobol or other out-of-state attorneys coming to Homer. (Tr. IV, 172.) (See also Bar Exhibit #2, pp.4-5, 13-15, Transcript, Zanders v. Louisiana State Board of Education, U.S.D.C., W.D. La. January 2, 1968.)

As a result of the Plaquemines arrest and prosecution, and by force of fear lest he be again charged, arrested, and "perhaps not... get out of the situation as physically fit as I was the last time" (Tr. IV, 170), Mr. Sobol has made no state court appearances since February 21, 1967. He has been asked to appear in civil rights matters in state courts, in association with Collins, Douglas & Elie, but has declined to do so. As a result, the L.C.D.C. has been required to turn down civil rights cases that it otherwise would have accepted; and in some of these cases the civil rights clients were unable to obtain other counsel, or other adequate counsel. (Tr. IV, 170-171, 193-195; V, 49-51.) The effect has been disruptive of Mr. Sobol's previously established lawyer-client relationships as well, since "several different civil rights leaders who have relied on us in the past, personally urged us to take [a]... case, such as Robert Hicks, of Bogalusa, and we simply couldn't do it." (Tr. IV, 195.)

On February 27, 1967, within a week of Mr. Sobol's arrest, Mr. Sidney Provensal, attorney for the defendants, wrote a letter to the Chairman of the Unauthorized Practice

of Law Committee of the Louisiana State Bar Association, wherein he represented (1) that Mr. Sobol had been practicing law in the Louisiana state courts for the past three years;[85] (2) that several attorneys had complained bitterly about his unlicensed practice in the state;[86] (3) that Mr. Sobol was connected with the L.C.D.C., which was associated either with C.O.R.E. or with the A.C.L.U.; (4) that Mr.Sobol had appeared in court in Plaquemines Parish, to represent a Negro, "alone";[87] (5) that the L.C.D.C. was a New York corporation that does not maintain an office for the service of process in Louisiana;

85/ This was false, and unless the defendant, Leander Perez, Jr., lied both in his deposition and his trial testimony about the extent of his investigation undertaken before he prosecuted Mr. Sobol (Tr. VII, 188-193; Plaintiffs' Exhibit #5, pp. 56-70),Mr. Provensal had access to information proving it was false.

86/ This also appears false. The reply of the U.P.L. Committee Chairman to Mr. Provensal indicated that the Committee had received no prior complaints concerning Mr. Sobol. (Plaintiffs' Exhibit #28, Letter, Edward F. Glusman to Sidney Provensal, March 6, 1967.) The correspondence between Leander Perez, Jr., and the other district attorneys of his acquaintance indicates no prior complaints on their parts. Defendants Leander Perez, Jr. and Hon. Eugene Leon profess in their depositions and testimony to have had no knowledge of Sobol prior to the Duncan case, and defendant Leander Perez, Sr. professes no knowledge of Sobol at all. The question thus arises: who complained to whom about Mr. Sobol, to Mr. Sidney Provensal's knowledge.

87/ This is, to put it charitably, misleading.

(6) that this corporation was also violating Louisiana law by permitting unauthorized persons to practice law in Louisiana[88]; and (7) that Lolis Elie was an Assistant District Attorney in Orleans Parish. Mr. Provensal concluded by requesting that the Bar Association "take immediate steps to vindicate this wrong, to institute legal procedings against Sobol and/or the corporation and Elie." (Plaintiffs' Exhibit #28, Letter, Sidney W. Provensal to Edward F. Glusman, February 27, 1967.) The Chairman replied to Mr. Provensal that the Committee had received no prior complaints against Mr. Sobol, but would investigate. (Plaintiffs' Exhibit #28, Letter, Edward F. Glusman to Sidney W. Provensal, March 6, 1967.)

Thereafter, the Committee did very thoroughly investigate Mr. Sobol's activities in the State of Louisiana; and, indeed, allowed Mr. Provensal and defendant Leander Perez, Jr. to appear in person before the Committee. (Tr. VIII, 193-196, 197-199, 218-221; Government Exhibits #27-28.) The upshot of this investigation was a letter from the Committee Chairman, Mr. Glusman, to Mr. Provensal, advising the latter: (1) that in view of the liberal language of the Louisiana rules governing out-of-state attorneys, the Committee would not take action against Mr. Sobol; and (2) that, to avoid the repetition of such

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[88] The harsh statutory penalties which Mr. Provensal is here invoking are described at p. 13 of Plaintiffs' Pretrial Memorandum of Law.

a case, the Committee was undertaking to revise the rules so as to prevent a long-run association designed to circumvent the intent of the "visiting attorney" privlege. (Plaintiffs' Exhibit #29, Letter, Edward F. Glusman to Sidney W. Provensal, June 12, 1967.)

Testifying as a witness herein, Mr. Glusman explained that the enforcement powers and practices of the U.P.L. Committee include the issuance of cease-and-desist letters, reporting of matters to local district attorneys for prosecution, the filing of criminal affidavits, and the filing of injunction and quo warranto proceedings in state court. (Tr. VIII, 208-209.) One of the reasons why the Committee is not proceeding against Mr. Sobol by injunction or like process is the pendency of the Plaquemines Parish criminal prosecution and the present lawsuit. (Tr. VIII, 210-211.) The Committee has under active consideration a "tightening up" of L.S.A.-R.S. §§37; 213-214. (Tr. VIII, 236-237.) Mr. Glusman has also communicated with the Standing Committee on Unauthorized Practice of Law of the American Bar Association in Chicago on the subject of the Sobol matter, and has provided that Committee from time to time information about the case. (Tr. VIII, 223-225; Plaintiffs' Exhibit #29; Plaintiffs' Exhibit #35.) Copies of this latter correspondence are addressed to A.B.A. Committee members in Connecticut and Pennsylvania.

In addition to his complaint made to the U.P.L. Committee, Mr. Provensal also wrote on February 27, 1967 to the Ethics and Grievances Committee of the Louisiana

State Bar Association, complaining against Collins, Douglas and Elie in regard to the Duncan case. This complaint was based upon Mr. Elie's position as an Assistant District Attorney for Orleans Parish, and upon Article 65 of the Louisiana Code of Criminal Procedure. (See note 47, supra.) After due investigation, the Ethics and Grievances Committee found no unethical conduct by C.D. & E., and rejected this complaint. (Plaintiffs' Exhibit #1; Government Exhibit #1.)

2. Effect on Other Attorneys Handling Civil Rights Matters.

Attorneys handling civil rights matters in Louisiana are aware that significant portions of the white community and, in some areas, local public officials, are inveterately opposed and hostile to equal rights for Negroes, and to persons who espouse those rights.[89] As a result, they function under the continuing apprehension that they may be charged either criminally or before the Ethics and Grievances Committee of the Bar Association, on manufactured or trumped-up charges. (Tr. I, 103,105, 164-165; II, 58-59; IX, 100-104, 107.) What is involved is both the "fear of being framed" (Tr. III, 81) and a realization that -- defense against such charges being burdensome and the notoriety attending them being prejudicial to a lawyer's practice (Tr. IX, 17-20, 25-30) -- the very lodging of the charges may be hurtful, irrespective of their ultimate outcome.

Such fears attach with more than ordinary intensity to Plaquemines Parish. This is so because of the well-publicized hostility of Defendants Leander Perez, Sr., and Leander Perez, Jr., to Negro civil rights and their proponents.[90]

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[89] See subsection (E) (4) (b) supra.

[90] See notes 59, 80 supra. The announced animosity of Defendants Leander Perez, Sr. to the A.C.L.U. is noted

Expression of that hostility has been directed specifically at "outsiders." Defendant District Attorney Leander Perez, Jr. stated publicly in 1965 that if any known agitator were to appear in Plaquemines Parish, his mere presence would amount to a disturbance of the peace, since he was an outsider. (Plaintiffs' Exhibit #5, p. 46.) The declamations of Judge Perez are legendary and can be judicially noticed. In addition, specific instances of bad experiences by attorneys who ventured to enter the Parish on matters with civil rights overtones have been brunted about in the profession. One incident appears in the deposition of a Negro lawyer, Louis Berry, who went with another to Plaquemines Parish in the early 1950's to address a public meeting in connection with a voting case. The two attorneys received word that state troopers were on their way to break up the meeting, and they left hurriedly. (Government Exhibit #15, pp. 29-31.) Another incident was the subject of unrebutted testimony at the trial. Earl Amadee and A.M. Trudeau, Jr., two Negro attorneys from New Orleans, went to Plaquemines Parish in the summer of 1961, at the request of the N.A.A.C.P., to represent a large group of arrested Negroes. They were met, reviled, threatened, and, in effect,

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Footnote 90, continued/
at p. 106 supra. It extends equally to other civil liberties and civil rights groups. "Civil rights workers are strictly a misnomer, and a cover up for Communists' activities in this country." (Plaintiffs' Exhibit #3, p. 46.)

run out of the Parish by Judge Perez personally. (Tr. V, 131-142, 161-163, confirmed in substance by Judge Perez's deposition, Plaintiffs' Exhibit #3, pp. 80-82.) This episode was given considerable contemporary attention in the Negro press (Government Exhibit #3), and considerable currency by word of mouth among Negro attorneys.(Tr. II, 94-96; V, 142-143.) Collins, Douglas & Elie accepted the Duncan case only with great trepidation and the fear that if harassment "was going to happen the place that it was going to come about would be in Plaquemine/s/." (Tr.I, 105; see Tr.I, 103, 164-165, 231; II, 15-16, 94-96; IX, 100-104, 107.) Similar apprehensions concerning the parish are shared by other attorneys experienced in civil rights matters. (Tr. II, 148, 167-168, 173-174; IX, 8-9.)

These circumstances support the opinion testimony of such experienced attorneys that Mr. Sobol's arrest will tend to repress and inhibit lawyers from handling civil rights matters. (Tr. III, 22, 80-81; Government Exhibit #8, pp. 57-58; Government Exhibit #13, pp. 79-82, 108; Government Exhibit #15, pp. 54-55; Government Exhibit #17, p. 60.) It will of course deter out-of-state attorneys in Mr. Sobol's approximate situation from doing what Mr. Sobol has done; that is the purpose of a criminal prosecution. In the context of civil rights practice in Louisiana, considering the particular significance of Plaquemines Parish, it is also likely to be perceived more broadly and to have a broader chilling effect. It will make

attorneys "a little bit more aware of the fact that [each time][91] you have been in one of these cases you endanger your family and yourself a little bit more." (Tr. V, 207.)

3. Effect on Civil Rights Activities of Clients.

Negroes engaged in civil rights activity in Louisiana are also aware of the hostility of local officialdom in many areas,[92] and are familiar with arrest and criminal prosecution as a means of repression.[93] Because of L.C.D.C.'s and Mr. Sobol's identification with the practice of civil rights law (Tr. III, 116), Mr. Sobol's arrest and prosecution are likely to be widely understood as repressive,[94] and will have an intimidating effect on persons active in the civil rights cause. This effect is credibly portrayed in Mr. A.Z. Young's description of his own reaction to Mr. Sobol's

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91/ Tr. V, 207 at line 12 should read "each time" instead of "after."

92/ See subsection (E) (4) (b) supra.

93/ See the litigation described in subsection (A) (5) (d) supra. Mr. A.Z. Young's apprehension of Angola (Tr. III, 119-120, 145-149, 153-154) is illustrative.

94/ Gary Duncan testified that when he first heard "they had put a lawyer in jail," he "just figured it was my lawyer," "[b]ecause of the kind of case he was handling." (Tr. III, 206.)

arrest:

> "I felt as though it was a situation where you kill the head and the body would die. I felt as though they were trying to kill the movement of Civil Rights, the Civil Rights movement throughout the State of Louisiana. This meant, as far as our movement was concerned, a drastic need for him, a lawyer and if he can't come to Washington Parish then we might as well hang up our glove." (Tr. III, 119.)

The reliance by civil rights leaders on the L.C.D.C. for the protection and vindication of their rights is demonstrated by the history of L.C.D.C.'s operations (see subsection (A) (5) (d) supra) and established by the testimony.[95/] It supports the conclusion that, if not enjoined by this Court, the prosecution of Mr. Sobol with its attendant

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95/ Tr. III, 119-120, 145-149, 168, 175-176; V, 28-29, 103. See particularly the testimony of Mr. Zelma Wyche regarding his reaction to Mr. Sobol's arrest.(Tr.III, 175):

> "The effect it had on me, when I heard it, it shook me up. I might use that word, it shook me up. I knew if this was the case and Dick Sobol was really found guilty and the L.C.D.C. lawyers were restricted from practicing law in Louisiana, I knew then that the negroes of Louisiana who were trying to secure equal rights would be in a bad fix. I might say that we would be in no position to get legal counsel from lawyers in Louisiana to represent us in Civil Rights cases and fight it to the fullest extent."

restriction on his practice,[96] will have a seriously repressive impact on the assertion and expression by Negro citizens of their federal civil rights.[97]

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[96] See subsection (G) (1) *supra*.

[97] See the testimony of Mr. Benjamin E. Smith:

"Well, from having talked to Negroes who have been in Civil Rights situations, school desegregation cases, and courthouse and parish voter registration drives, they depend a great deal on the lawyer. They are not in there to depend upon violence; they are committed to the lawyer defending them, and getting them out of jail. And if their lawyer gets arrested, it is a serious morale problem with these kind of clients. They are uneducated, largely, and some of them are people who are afraid of lawful authority as has been exercised against them for a long period of time, and for the lawyers to be arrested is a serious psychological blow to them in my opinion.

Q. Would it, in your opinion, deter them from engaging in various kinds of Civil Rights Activities?

A. It might very well, if they feel they are going to be arrested and with nobody there to get them out of jail. And if the lawyer can't come down and protect them, I would think that any normal person would be hesitant to put themselves in that sort of position. (Tr. III, 148-149.)

H. The Sobol Prosecution as a Harassment Prosecution.

Mr. Sobol's prosecution is designed to have the effects just described. Its purpose is to terminate his practice in Louisiana, in association with Collins, Douglas & Elie, and thereby to deprive Negroes engaged in civil rights activity of the representation which he provides. Its further purpose is to discourage and repress their activities. 98/

98/ These findings are inferred from the findings in section (G) supra respecting the effect of the Sobol prosecution. They are supported by the following additional circumstances:

(1) The hostility of the defendants Leander Perez, Jr., and Leander Perez, Sr. to Negro civil rights activities. (See subsection (D) (2); (G) (2), supra.)

(2) Mr. Leander Perez, Jr.'s, letter writing campaign to encourage the prosecution of Mr. Sobol by other district attorneys. (See subsection (D) (2), supra.)

(3) The multiple complaints made by Mr. Sidney Provensal, on behalf of the defendants, against Mr. Sobol, Collins, Douglas & Elie and the L.C.D.C. (See subsection (D) (2) supra.)

(4) The prosecution of Mr. Sobol by the defendant Leander Perez, Jr., without consulting the Bar Association to consider the less harsh U.P.L. enforcement methods that are ordinarily employed. (Tr. VII, 219-221.)

(5) The circumstance that the Sobol prosecution is unique, that there has never been a criminal prosecution of an attorney under similar circumstances. (Tr. VII, 216-219, 220-223; VIII, 202-205, 233-234.)

(6) The personally destructive consequences to an attorney's professional career of a U.P.L. conviction, of which the defendants must be aware.

(7) Prior abuse of civil rights lawyers in Plaquemines Parish. (See subsection (G) (2) supra.)

(8) The harassment of the plaintiff Gary Duncan in his own prosecution. (See footnote 60, supra.)

The defendant Leander Perez, Sr., although not officially authorized to participate in the prosecution, shares these purposes and has the power to effect them by his influence in the Parish of Plaquemines.[99/]

99/ Judge Perez's hostility to civil rights activities appears both from his deposition (see note 80, supra) and from acts of his which the court can judicially notice (see note 59, supra). His personal involvement, not by authority of office, but by the sheer assertion of power, in the past mistreatment of attorneys in Plaquemines Parish is documented by the Amadee episode. (see subsection (G) (2) supra.) His assertion in his deposition of power to "make it very inconvenient for you [a member of the A.C.L.U.] in the Parish of Plaquemines" (p. 106 supra) is a threat that he obviously has the ability to carry out. In his deposition, he describes himself as the people's "leader" and the most important leader in the Parish, by reason of forty years of political activity there. (Plaintiffs' Exhibit #3, pp. 63-64, see also id., pp. 93-95.) His continuing positions in Democratic Party circles (see id., pp. 5-10), his personal influence in the Legislature (pp. 15-16), and his relationship to the defendant Leander Perez, Jr., solidify his power.

II. PROPOSED CONCLUSIONS OF LAW

1. Plaintiff Gary Duncan has a right, protected by the Sixth and Fourteenth Amendments to the Constitution, to the services of counsel of his choice, plaintiff Richard B. Sobol, in association with Louisiana-licensed attorneys, in the criminal prosecution against Duncan.

/This is the portion of the First Cause of Action that is based on the Sixth Amendment Right to Counsel. It is described at pp. 38-39 of Plaintiffs' Pretrial Memorandum of Law /hereafter, Pretrial Memo/, and briefed at Id., pp. 49-53. The factual findings supporting the Conclusion are those reciting the history of the Duncan case (Section I(C) supra), and the finding at p. 39 supra that Gary Duncan has trust and confidence in Mr. Sobol as his chosen attorney./

2. Plaintiff Gary Duncan has a right, protected by the Supremacy and Privileges and Immunities Clauses of the Constitution, to the services of a lawyer of his choice, plaintiff Richard B. Sobol, as a specialist and expert in federal-law matters, in association with Louisiana-licensed attorneys, in connection with the criminal prosecution against Duncan.

/This is the portion of the First Cause of Action that is based on the Supremacy and Privileges and Immunities Clauses. It is described at Pretrial Memo pp. 38-39 and briefed at Id., pp. 54-60. The factual findings supporting the Conclusion are those reciting the history of the Duncan case (Section I(C) supra); the finding at p. 39

supra that Gary Duncan has trust and confidence in Mr. Sobol as his chosen attorney; and the findings that Mr. Sobol's background and training (subsection I(B)(1) supra) and experience with L. C. D. C. (subsections I(A)(5)(d); I(B)(2)), qualify him as an expert in federal civil rights matters. /

3. Plaintiff Richard B. Sobol has a federal constitutional right to represent Duncan, correlative with Duncan's rights described in Conclusions (1) and (2), supra.

/This Conclusion follows from Conclusions (1) and (2), supra. See Pretrial Memo, p. 53./

4. The class of plaintiff Richard B. Sobol's clients has the same rights to his representation as does Gary Duncan, described in Conclusions (1) and (2) supra. The class also has the right, protected by the First and Fourteenth Amendments, to his services as a lawyer, in association with Louisiana-licensed attorneys, to defend them against proceedings which abridge their freedoms of political expression, and to maintain on their behalf litigation which is itself a form of political expression. Plaintiff Sobol has correlative rights.

/This is the Second Cause of Action, described at Pretrial Memo pp. 39-41. The Supremacy Clause and Privileges and Immunities Clause submissions are briefed at Id., pp. 54-60; and the First Amendment submission is briefed at Id., pp. 61-64. The factual findings supporting the Conclusion are those relating to L. C. D. C.'s organization and work (Section I(A)supra); and those relating to Mr. Sobol's employment, work, relations with Collins, Douglas and Elie and relations with clients (subsection I(B), (i)-(4).)/

5. Plaintiff Sobol's practice as an attorney in the State of Louisiana, which is restricted to the handling of non-paying federal civil rights matters in association with Louisiana-licensed attorneys, is itself a form of political expression that is protected by the First and Fourteenth Amendments to the Constitution.

/This is the aspect of the Second Cause of Action that relates to Mr. Sobol's personal rights to expression. It is described at Pretrial Memo pp. 39-41 and briefed at Id., pp. 61-64. The findings supporting the Conclusion are the same as those supporting Conclusion (3), supra, with particular attention to the findings on p. 35 supra, which indicate that Mr. Sobol's practice is a matter of ideological dedication, not a livelihood./

6. The prosecution of plaintiff Richard B. Sobol, and the enforcement against him of L.S.A.-R.S. § 37:213, 214 in such a manner as to prohibit his representation of the plaintiff Gary Duncan and the class plaintiffs, in non-paying civil rights cases in association with Louisiana-licensed attorneys abridges the constitutional rights described in Conclusions (1)-(5) supra. No preponderate state interest justifies this abridgment, since the regulatory concerns of Louisiana are amply protected by plaintiff Sobol's association with local counsel. Plaintiff Sobol's prosecution is therefore unconstitutional, and L.S.A.-R.S. §§ 213, 214 are unconstitutional in their application to plaintiff Sobol.

/This Conclusion (the Third Cause of Action, at Pretrial Memo, p. 42) follows from Conclusions (1)-(5) supra. The rights described in those sections may be

abridged by state regulation of the legal profession only upon a showing of some actual harm to legitimate state interests flowing from the conduct which the State restricts. United Mine Workers of America, District 12 v. Illinois State Bar Ass'n, 389 U.S. 217 (1967). Here the State's legitimate interests are fully protected by association with local counsel. The factual finding in subsection (F)(2) supra tends to demonstrate that the State of Louisiana has had no such problems of experience with out-of-state lawyers as would justify the drastic restriction placed upon them by the present prosecution./

7. Plaintiff Richard B. Sobol is not domiciled in the State of Louisiana. He is therefore not a permanent resident of the State, and is "temporarily present" therein, within the meaning of L.S.A.-R.S. § 37:214.

/This Conclusion lays a basis for Conclusion (9) infra. It is based upon the factual findings in subsection (B)(5) supra./

8. Plaintiff Richard B. Sobol's representation of plaintiff Gary Duncan, and his practice in civil rights cases in the State of Louisiana are exclusively "in association with" Louisiana-licensed attorneys within the meaning of L.S.A.-R.S. § 37:214.

/This Conclusion lays a basis for Conclusion (9) infra. It is based upon the factual findings in subsection I(B) (3) and I(C)(5) supra./

9. Plaintiff Richard B. Sobol is not in violation of L. S. A.-R. S. §§ 37:213-214.

/This Conclusion, based upon Conclusion (7) and (8) supra, involves construction of L. S. A.-R. S. §37:214. It leads, in turn, to Conclusion (10) infra. See Pretrial Memo, p. 68 at n. 35./

10. (a) Plaintiff Richard B. Sobol's prosecution is unwarranted. (b) Its effect is to abridge the federal constitutional rights described in Conclusion (1)-(5) supra. (c) It is a harassment prosecution that is designed to abridge those rights. (d) On each of these accounts, it is unconstitutional.

/This is the harassment portion of the Fourth, Fifth and Sixth Causes of Action, at Pretrial Memo pp. 42-44, briefed at Id., pp. 68-69./

11. If L. S. A.-R. S. §§ 37:213, 214 are construed to prohibit plaintiff Richard B. Sobol's representation of plaintiff Gary Duncan and the class plaintiffs, in non-paying civil rights matters in association with Louisiana-licensed attorneys, the statute is unconstitutional on its face for vagueness and as an over-broad regulation of the federal rights described in Conclusions (1)-(5) supra.

/This is the attack upon the face of L. S. A. -R. S. §§ 37:213, 214 made in the Fourth Cause of Action, at Pretrial Memo, pp. 69-75. We submit that the vagueness of the phrase "temporarily present" has been made overwhelmingly evident by the confused and conflicting positions concerning the meaning taken by the individual defendants, who are prosecuting Mr. Sobol, and by Defendant-Intervenor Louisiana

State Bar Association. The Bar Association's submission in this Court is that Mr. Sobol was temporarily present in Louisiana in January 1967, for reasons that it has no more satisfactorily explained than have the individual defendants explained their contrary submission. The vice lies in the vagueness of § 214, admitted essentially by the Bar in Mr. Edward F. Glusman's letter of June 12, 1967 to Mr. Sidney W. Provensal (Plaintiffs Exhibit #29)./

12. If L.S.A.-R.S. §§ 37:213, 214 are enforced so as to prohibit plaintiff Richard B. Sobol's representation of plaintiff Gary Duncan and the class plaintiffs, in non-paying civil rights matters in association with Louisiana-licensed attorneys, the statute deprives Negroes in civil rights matters of equal and adequate representation by counsel, and thereby of the equal protection of law.

/This is the Seventh Cause of Action, described at Pretrial Memo, p. 44, and briefed at Id., pp. 75-77. The Conclusion is supported by the findings of fact relating to the dearth of Louisiana-licensed attorneys available to handle civil rights cases (Section I(E) supra). and to the role of out-of-state attorneys in general (Section I(F)(1) supra) and L.C.D.C. in particular (Section I(A) supra) in those cases./

13. Defendant Eugene E. Leon, as presiding judge of the Twenty-Fifth Judicial District Court, permitted plaintiff Richard B. Sobol to appear for and represent plaintiff Gary Duncan as an out-of-state attorney in association with Louisiana-licensed

attorneys, in the Duncan case. Plaintiff Sobol's prosecution under L. S. A. -R. S. §§ 37:213, 214, under these circumstances, denies plaintiff Duncan's right to counsel and denies plaintiff Sobol the fundamental fairness required by due process of law.

/This Conclusion is supported by the findings in subsection (C)(2) supra. Its legal theory is that developed at Pretrial Memo, pp. 53-54 n. 27./

14. Plaintiff Richard B. Sobol's prosecution and the enforcement against him of L. S. A. -R. S. §§ 37:213, 214 exert a chilling effect upon the federally-protected rights described in Conclusions (1)-(5) supra. For this reason, the complaint states and the record supports a claim for equitable relief by injunction of the prosecution and the statute's enforcement.

/See Pretrial Memo, pp. 10-24. This Conclusion is supported by the findings in Section I(G) supra./

15. For the reasons described in Conclusion (14) supra, and, additionally, by reason of the intervention of the United States as a party plaintiff herein, 28 U. S. C. § 2283 does not bar the relief sought by injunction of plaintiff Sobol's prosecution.

/See Pretrial Memo, pp. 25-36, and footnote 1 of this Brief./

16. The Court has jurisdiction of the parties and of the cause, under 28 U. S. C. 1343 and is authorized to give the injunctive relief requested under 47 U. S. C. § 1983.

/See Pretrial Memo, pp. 7-9./

III. RELIEF

The Findings of Fact and Conclusions of Law above support the granting of the following relief against the defendants and defendants-intervenors:[100/]

100/ Relief against each of the defendants is warranted for the following reasons:

(1) Leander Perez, Jr.: As District Attorney, Mr. Perez is responsible for prosecuting Mr. Sobol, and for enforcing L.S.A.-R.S. §§ 37:213, 214 within the Twenty-Fifth Judicial District. He may therefore be sued to restrain the prosecution, declare the Statute unconstitutional, and enjoin its enforcement under long-settled principles. Ex parte Young, 209 U.S. 123 (1908) (Attorney General); Dombrowski v. Pfister, 380 U.S. 479 (1965) (District Attorney); Zwickler v. Koota, 389 U.S. 241 (1967) (District Attorney); United States v. Wood, 295 F. 2d 772 (5th Cir. 1961) (District Attorney; City Attorney).

(2) Hon. Eugene E. Leon: As the Judge of the Twenty-Fifth Judicial District Court, Judge Leon is the representative of the court in which Mr. Sobol's prosecution is pending. This alone has always been thought sufficient to warrant his joinder as a defendant in actions of the present sort. United States v. McLeod, 385 F. 2d 734, 738 n. 3 (5th Cir. 1967); United States v. Clark, 249 F. Supp. 720, 727 (S.D. Ala. 1965); Hulett v. Julian, 250 F. Supp. 208 (M.D. Ala. 1966). In addition, Judge Leon is shown personally to have entrapped Mr. Sobol, for purpose of the submission in Conclusion (II) (13) supra; he is the judicial officer who set Mr. Sobol's bond (unconstitutionally, for obvious reasons, Stack v. Boyle, 342 U.S. 1 (1951)); and he is the complainant listed on Mr. Sobol's arrest report, although he testified on deposition that he did not know how this could have happened. (See p. 61, supra.)

(3) Leander Perez, Sr.: For the reasons stated in footnote 99 supra, Judge Perez is a proper party defendant against whom injunctive relief is warranted. Part of the relief sought involves a protective injunction against retaliatory harassment of the plaintiffs arising out of this lawsuit.

(4) State of Louisiana: Prosecutions under L.S.A.-R.S. §§ 37:213, 214 are maintained by authority of the State, under the general supervisory power of the Attorney General. La. Const. Art. VII, § 56; Louisiana Code of Criminal Procedure, Arts. 61, 62. The threat of prosecution of Mr. Sobol under the Statute is State-wide (See subsection (G)(1) supra) and can be effectively thwarted only by a decree binding the State's chief legal officer in the exercise of his supervisory jurisdiction given by the Code. By intervening as a party defendant, the State has consented to the jurisdiction of the Court.

(footnote continued)

(1) Injunction of Mr. Sobol's pending prosecution.

(2) Injunction of any other proceedings against Mr. Sobol under L.S.A.

-R.S. §§ 37:213, 214 arising out of his representation of Gary Duncan.

Footnote 100 continued/

(5) Louisiana State Bar Association: The Bar Association's intrest in this proceeding is pleaded in its petition to intervene and proved by State Bar Exhibit #1. It has investigated Mr. Sobol and has the power to proceed against him in the several manners described in subsection (G)(1), at p. 114 supra. Mr. Glusman's testimony indicates that its present failure to so proceed is occasioned in part by the pending of this suit (p. 119, supra); and the Court's decree should give appropriate relief against Bar proceedings in the wake of the suit. The Bar's announced intention to revise L.S.A. § 37:214 in order to prohibit Mr. Sobol's practice, and to "tighten up" the visiting-attorney privilege are menacing unless this Court's order sets constitutional restrictions upon the "tightening up". In addition, Mr. Glusman of the U.P.L. Committee has been corresponding with persons on the parallel A.B.A. Committee about Mr. Sobol's case. (p. 119 supra.) Our prayer that all disciplinary committee bar associations and professional societies that have been informed of the charges against Mr. Sobol now be notified of his clearance, infra, this requires relief against the Louisiana State Bar.

Like the State, the Bar Association submitted to the jurisdiction of the Court by intervening as a party defendant. An amicus presentation would have been more appropriate if it did not wish to assume the role which its intervention entails.

(6) We seek no judically cognizable relief against the Defendants-Intervenors Dowling, Wessel, et al.

(3) Injunction of any future interference with Mr. Sobol's representation of Gary Duncan under color or authority of L. S. A. -R. S. §§ 37:213, 214.

(4) In junction of any other interference with Mr. Sobol's lawful representation of Gary Duncan, in connection with the Duncan case in Plaquemines Parish.

(5) Injunction of harassment of Mr. Sobol or Mr. Duncan by the individual defendants, by reason of this lawsuit or the Duncan case.

(6) Relief to redress Mr. Sobol's unlawful arrest and its incidents, including (a) the discharge of his bond; (b) the return of the bond premium; (c) the return of all fingerprints and "mug shots,"; (d) the expungement of the arrest record; (e) required notification of all informed authorities that Mr. Sobol's arrest has been judicially determined to be unlawful, and (f) required requests to those authorities for the return of fingerprints and "mug shots."

(7) Relief against damage occasioned by the arrest to Mr. Sobol's professional reputation and career, including (a) a declaratory judgment (i) that Mr. Sobol's arrest was unwarranted and illegal, and (ii) that his conduct underlying the charge against him was lawful; and (b) a required notification of this judicial declaration to all professional associations, disciplinary committees and bar groups heretofore informed by any of the defendants or defendants-intervenors of the charges against Mr. Sobol.

(8) A declaratory judgment that Mr. Sobol's representation of clients in non-paying civil rights cases in Louisiana, in association with Collins, Douglas and Elie, is not unlawful under L. S. A. -R. S. §§ 37:213, 214; that it is constitutionally

protected by the Supremacy Clause and the First and Fourteenth Amendments; and that, if construed to prohibit such representation, L.S.A.-R.S., §§ 37:213, 214 are unconstitutional on their face and as applied.

(9) An injunction against the individual defendants, the State of Louisiana, and the Louisiana State Bar Association, prohibiting them from enforcing L.S.A.-R.S. §§ 37:213, against Mr. Sobol or any attorney associated with him or with Collins, Douglas & Elie, in such a manner as to prevent, restrict or interfere with their representation of persons in non-paying civil rights cases in the State of Louisiana, in association with Louisiana-licensed attorneys.

(10) An injunction against the individual defendants, The State of Louisiana, and the Louisiana State Bar Association, prohibiting them from interfering with, restricting or abridging Mr. Sobol's practice of representing persons in non-paying civil rights cases in the State of Louisiana, in association with Louisiana-licensed attorneys.

Plaintiffs will submit a decree embodying these terms, at the pleasure of the Court.

Respectfully submitted,

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Dated: April 8, 1968

Certificate of Service

This is to certify that on the 8th day of April, 1968, plaintiffs' Post-Trial Brief was delivered by hand to:

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