

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CITY OF MEMPHIS,
A Municipal Corporation,

Complainant,

v.

MARTIN LUTHER KING, JR.,
HOSEA WILLIAMS, REVEREND
JAMES BEVEL, REVEREND JAMES
ORANGE, RALPH D. ABERNATHY and
BERNARD LEE, all Non-Residents
of the State of Tennessee,

Defendants.

NO. C-68-80

A hearing in the above-styled matter came on to be heard on this date, Wednesday, April 3rd, 1968, at 11:45 o'clock, a. m., before the Honorable Bailey Brown, Judge, presiding, when and where proceedings were had as follows:

APPEARANCES:

For the Complainant: Frank B. Gianotti, Esquire
James M. Manire, Esquire
E. Brady Bartusch, Esquire
Frierson Graves, Esquire

For the Defendants: Louis Lucas, Esquire

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<u>Witness</u>	<u>Direct</u>	<u>Gross</u>	<u>R/D</u>	<u>R/C</u>
Frank C. Holloman	36	64		
J. C. MacDonald	86	91		
Henry E. Lux	104	110		

THE COURT: Mr. Gianotti, do you have something to present?

MR. MANIRE: If Your Honor please, Mr. Gianotti has asked me to make an opening remark to Your Honor. I have the so designated Bill of Complaint of the City of Memphis against the Reverend Martin Luther King, Jr., and other non-residents of the State of Tennessee, which for purposes of this particular

hearing an application seeks a temporary restraining order against a proposed and well-advertised march over the streets of Memphis.

The jurisdictional grounds are, one, diversity of citizenship, and, two, the several Federal questions raised by statutes set out in the bill.

THE COURT: I notice you did not make any residents defendants here.

MR. MANIRE: No resident defendants, but there is no particular reason for that. I might say that it has somewhat reserved question about diversity should it become an issue or proposition for the Court. I don't believe that it would be, in view of the constitutional questions raised. However, it is a reserved jurisdictional proposition.

This proceeding has been filed with the Clerk, and has fallen to Judge McRae's court. We, therefore, presented to Your Honor in his discretion to act on the preliminary prayer for temporary restraining order, and that would, of course, be up to Your Honor as to whether you could hear it at this time. I might say there are affidavits on the part of the Director of Fire and Police, Frank Holloman and Mr. Lux, who was in the middle of all of it last week, and Chief MacDonald. I can go into some of the merits of the bill at this time, but I don't believe it would be necessary in view of the immediate question before the Court with reference to temporary restraining order.

THE COURT: Let me look over the bill here. Of course, I have just received a copy of it.

(Court peruses Bill of Complaint in silence, and then the following proceedings were had:)

THE COURT: Mr. Manire, in view of the fact that Judge McRae is holding court in Jackson, I will entertain your motion here.

MR. MANIRE: Very Well, Your Honor. Mr. Gianotti is in position to speak more directly to the merits of

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or if Your Honor would like to examine him in person, he is available, and we can have him here in five minutes. Mr. Holloman is here, and he has gone into depths, I would say, of the possibilities that could occur in the event a massive march is permitted.

By "massive", we mean somewhere between five, eight, ten thousand, upwards. The Police Department has no immediate information as to the number, and it is very difficult, as the Court would probably realize, and has already realized, that an accumulation of a crowd of people under certain circumstances is a very easy thing to bring about, and it could be that there could be -- well, I would say a substantially large group, force, mass, whatever the proper words are, could develop in a very short period of time.

Now, with that in mind, and the fact that the Police Department, while it has adequate resources for normal conditions, I am not certain if they could cope with a massive march, and I worked with them enough years to know that they are operating on a limited normal-type basis. The facilities are not

readily available, and this has been considered in certain decisions wherein these massive gatherings and parades have occurred, and the Federal Courts and State Courts have been called upon to protect the rights of all people.

Now, as I say, these gentlemen here -- Mr. Holloman, Mr. Lux, Chief MacDonald are immediately available, and if the Court would want to be further satisfied as to the possibilities that may be brought out in the event of a massive march, I think these gentlemen can certainly give Your Honor the benefit of first-hand information.

Now, as to the law side, of course, for the past twelve to thirteen years now, we have gone through various stages of discriminatory action, protection of civil rights, and not to review all of these things, I think a lot of them are well behind us, and we are moving with progress, certainly not to a complete understanding, but certainly better understanding, looking back to the conditions that existed in 1956 and 1957, with the help of the Federal Courts in Memphis and other Courts throughout the country. We have, in my opinion, come along from

a long way, and while there is still a long way to travel, I think with cooperation and understanding and with fair treatment, these gaps can be overcome. Those are just personal remarks. But, at the same time, I do think they fit in particularly where we have a society that has gone on for these many years, and throughout all this so-called period of turmoil that unfortunately has existed in other cities, Memphis has, up until now, this past week, the 28th of March, escaped this type of action.

Now, these cases that we rely on, if Your Honor please, to some extent, we say they are directly in point. All these cases deal in civil rights action. But, in this particular case, it perhaps takes a different turn in that one of the main bases of the Bill here is that if Mr. Holloman, Mayor Loeb and Chief MacDonald and all these people don't do the necessary thing, then by their inaction, they are just as directly responsible as those who, through action, were held to be responsible in other cases directly in point, and where they were acting either under invalid statute or color, whatever the various reasons were given, and upheld by the various

Courts of our land during the period of whatever you want to call it -- transition, improvement, change, progress -- all those words I certainly accept, accept the law. But, when we get to the point where law and order breaks down, as it did on last Thursday, these officers feel, and I certainly join in with them, that they have a duty to protect, not only the civil rights of the people who are not immediately a part of the march, but also those people who are marching.

There are a number of those who have been hurt, and in the Bill, as Your Honor will probably notice, and I understand that information is available to the same point outside of the Police Department; namely, that many calls anonymously have come, not only to the Police Department, but to other recognized, responsible agencies in the city that something is liable to happen to Dr. King, and this we certainly, with the utmost ability that we have, to use the English language, we certainly state that we do not want that to happen, and we feel called upon to do everything we can to avoid it.

Now, I will tell Your Honor on the front end,

and we think there are cases in principle, and I have two or three of them -- my period of research has certainly been limited -- but, to the best of our ability, we try to pinpoint certain decisions that we think are in point.

Now, these rights certainly exist, and I think there is adequate state and Federal law on the books, and the Civil Rights Statutes and others that should afford some protection.

THE COURT: I take it that since you sued only non-residents, as Mr. Manire indicated, that you are relying on diversity jurisdiction, and in that connection relying on state law generally with respect to these matters, and then you are also relying on Federal question jurisdiction, is that correct?

MR. GIANOTTI: That's correct.

THE COURT: And as far as Federal question is concerned, you are alleging certain provisions of the Federal Constitution as well as some Civil Rights Acts as the basis for your Federal question?

MR. GIANOTTI: That's correct. Would Your Honor like me to proceed?

THE COURT: Yes, sir.

MR. GIANOTTI: I am sorry, and apologize for not having written memoranda, but time unfortunately did not permit, but we will, at the earliest opportunity, present it to Your Honor. In the case of Cameron vs. Johnson, the case decided in 1966 --

THE COURT: What is the citation on that?

MR. GIANOTTI: 262 Fed. Supp., at 873. Now, that case was previously reported in 244 Fed. Supp., at 846, and that was the first case, and I will outline, and perhaps Your Honor will know what has happened. It was before a three-judge court, and then went to the Supreme Court of the United States and brought back and tried the second time, and so far as we have been able to determine, that is the final decision that I am now referring to in Cameron vs. Johnson. In this case, certain Negro citizens brought suit in the Federal District Court against the Governor of Mississippi, the Sheriff of Forrest County, and others, seeking an injunction against the statute which forbade picketing at public buildings so as to block ingress and egress. There were allegations that the statute was applied to

discriminate against the plaintiff to discourage civil rights activities -- well, I won't read the whole case, but to summarize what happened, and I will come back to certain points of it, the judges went on and held that these plaintiffs were not being unduly harassed and so forth, and that their rights were not being violated for the reasons set forth because the facts in this case showed as I think the facts in our case will show that when the marches first began around the courthouse, they were walking under certain lines there which did permit ingress and egress from the courthouse, and no police action was involved as long as they kept a reasonable opening, reasonable distance between the marchers.

Now, as time progressed, and when they finally got so close together that they then prevented and violated the terms of the statute, then there was police interference, and the Court so held in the first case in 244 Fed. Supp. 846.

Now, there had been decided prior to that time, a case which is reported in -- it went up from Louisiana, known as the Dombrowski vs. Pfister, 380, U. S., 484, 14 Law Edition, 2nd., 22. Said the Court

in this last and final opinion, and I will read just one short sentence -- At the outset the Supreme Court directed -- This is after it had been appealed to the Supreme Court of the United States -- The Court said -- at the outset the Supreme Court directed our attention to this case, citing the citation. This was a note to the Opinion of the Court in Dombrowski vs. Pfister, which will be set out in the margin, and it is referred to here. Now, briefly, the Court said -- Dombrowski sought injunctive and declaratory relief prior to arrest or prosecution, it being alleged that such was threatened to harass appellants and discourage them and their supporters from asserting and attempting to vindicate the Constitutional rights of Negro citizens of Louisiana, and it cites a particular statute involved. The note continued, however, to the effect that it was unnecessary to resolve the question at that point without certain civil rights statutes. Then they referred to the Section 265 about prohibition of injunctions where they are brought originally in state court, and then you come over to Federal Court, and there was a lot of discussion

here about that, but this Court finally held that they did not have jurisdiction; that they should not be permitted to violate this particular statute involved. But, they go on and say that the Dombrowski sets forth two separate and distinct categories and circumstances in which the exercise of Federal equity power to restrain criminal prosecution is appropriate.

Now, here, while we do not have, as such, a statute or ordinance on parades, we do have, and it can be developed without any trouble, a custom, such as was recognized as action, as color under local law in all of the cases that I know of under the Fourteenth Amendment. So, we can establish, and will establish that we are not trying to prohibit a parade as such under traditional acceptance of the right to hold parades, and the proof will be that Memphis is probably as much of a parade town, as Your Honor well knows, as any other city around, because at the drop of a hat, it has been said that Memphis will have and has had parades. So, this is not to stop parades. The thrust of this Bill is to stop a parade at this particular time in view of the facts

and circumstances existing at the time, and that's a factual circumstance, which, as we have already said, can be fully developed by persons who were actually engaged in the problem.

Now, the Court went on, without belaboring this idea here, the Court went on and established the fact that, "The plaintiff had been picketing the courthouse, and they had not been arrested, because -- (continuing to read) -- other consideration."

Now, they point out, for the purpose of showing that this case is entirely different from the Dombrowski case, which the Supreme Court indicated that this three-judge court should look at in the light of the facts in which they did -- now, this language of the Court, we say, is particularly in point -- (reading) "Plaintiffs also say that the action of the city authorities in permitting the use of streets for school parades and like -- (continuing to read) -- use of courthouse by other citizens who have an equal right to use same." We say the same is absolutely true here, because there are other people, merchants and others who certainly have a right to use the streets of the City of Memphis, and under the

circumstances which existed on the 28th, there is, in the opinion of these officials, no chance for anybody to exercise any civil rights under these circumstances. "We hold that under all the facts and circumstances in this case --- (continuing to read) -- that injunctive or declaratory relief as to future enforcement by the statute is not justified." And he goes on to say, "The plaintiffs allege that they were picketing the courthouse -- (continuing to read) --- encourage others to do so." We have that element here, Your Honor. "Since this controversy arose -- (continuing to read) -- in the State of Mississippi during the next five years."

So, they go on to say, "The right to vote is now beyond all controversy or unrest. Picketing to obtain the vote or encourage others to do so is a thing of the past."

Now, we say here to the same point, that this is not an attempt on the part of the officials, the Mayor or the officials of the City of Memphis to, in any way, to prevent reasonable protests, exhibitions, assemblies, and I think the record will show that there have been numerous assemblies and reasonable marches on

Main Street. I am sure Your Honor, if you wanted to, could take judicial notice of that, being in such close proximity to the action that we are speaking about. But, if Your Honor should find from the facts and after a full examination of the facts -- we don't think so -- but, after all, we are not the final authorities in this matter, that is the officials can only use their best judgment -- if Your Honor should find there is a reasonable way to have this parade, there are cases, and I have one right here, where the Court did go in, and this is in the case of Cunningham vs. Ingram. It just has a reference, July 22nd and August 12th, 1966. In this case the Court ordered as follows, "Plaintiffs and members of the class they represent shall be permitted to peacefully march, peacefully picket -- (continuing to read) -- subject to the following conditions:", and I will be glad to read them. There followed some ten paragraphs in which the Court very meticulously goes into various arrangements that might be permitted in connection with marching conditions.

THE COURT: Well, summarize them.

MR. GIANOTTI: Not more than one organized

march at one time, obey all traffic signals and directions of the police officers, shall form in groups of not more than twenty to each group and maintain intervals, individuals in the group may walk in no greater numbers than two abreast, and intervals between the individuals shall be maintained and so forth, one person for each twenty marchers shall be permitted to walk outside of and abreast to serve as control personnel, and be conducted as close as possible to the right-hand edge of public streets, and not to interfere with normal traffic, and not disturb the peace of the homes adjacent -- well, I don't know of any homes on Main Street, but that's evidently a different situation -- no march shall be conducted or permitted to proceed unless notice to the Police Department shall have been given by plaintiffs or members of their class at least one hour prior to the march -- of course, Memphis being a larger city, I think a little more time than one hour might be given -- and they are to give notice of the routes to be taken and approximate number of participants -- and that last is, of course, under present conditions, we would suggest, very important

and picketing -- well, we are not directly involved with picketing at this time, Your Honor, while there has been some suggestion that this picketing may become annoying, although it is not mentioned in this Bill.

THE COURT: Mr. Gianotti, suppose the Court should issue a restraining order or ultimately the Court issued an injunction allowing the march, but with limiting restrictions as was apparently done in the case that you just read from, what happens if people are not under injunction, which would be everybody in the parade who is not a non-resident, did what they did last time? I just wonder how much safeguard that would be.

MR. GIANOTTI: Well, we have, Your Honor, set forth in the Bill, while it is true it is primarily diversity, in the statement of Mr. Holloman here, there is information that he is passing on in this affidavit that there are many people coming into Memphis at this time who will, we believe, under all the facts and circumstances, be acting in

concert with these people. Now, of course, there will be others, other residents here who will be in the march, and whether you could broaden it to

that vast group of people or not would be, I think, a serious question to consider.

THE COURT: In any event, as of now, there are no resident defendants. In other words, the suit is against Dr. King, and, I assume, these other ministers or his immediate associates in his movement, and all non-residents of the State of Tennessee, and those acting in concert. So, I take it that so far as you are suing those acting in concert, you are only suing non-residents.

MR. GIANOTTI: Well, under the circumstances, if Your Honor please, we called attention to the fact that these non-residents leading a march, a large number will be non-residents, and certainly there will be residents too.

THE COURT: Well, I assume the reason you sued these individual ministers, all of whom are non-residents, and all the ones acting in concert, is because you would have diversity. But, that being true, the fact that the injunction would already run against non-residents, I still get back to my original question -- if you issued an injunction to the effect in general that you can have the parade, but you have

to have these limiting qualifications, what happens if a bunch of people who are not under the injunction --

MR. GIANOTTI: (Interposing) Well, I think Your Honor could well broaden the injunction under the facts as outlined that we expect to happen under the broad terms of the Bill, and it could be broadened to include others.

THE COURT: Then, the next question is, even if you included everybody, if you allowed the parade to go on and then you have the same thing we had last week, what you are trying to avoid, it could be that what you are trying to avoid would happen.

MR. GIANOTTI: And that's the reason we addressed ourselves first and foremost to these defendants. Our information is that they are getting up this parade, and Martin Luther King, the primary one who is doing it, together with his aides.

THE COURT: Well, of course, we don't know, but if the Court entered an injunction enjoining and prohibiting the defendants named in this complaint from taking part or forming a parade of the nature outlined in the complaint, it would seem to the Court there would be nothing to keep the residents, for

example, Reverend Lawson mentioned here in the complaint, from going ahead and organizing the parade and having the parade.

MR. GIANOTTI: Well, we could either seek to amend the Bill, or, if necessary, file a Bill in the state court against the other people who are residents, which we are prepared to do.

THE COURT: All right, Mr. Gianotti, before we go any further, let me say this -- Mr. Lucas, Mr. Gianotti says that you are counsel for all these individual defendants who are named here, is that correct?

MR. LUCAS: If Your Honor please, the NAACP defense firm in New York is the counsel of record for Dr. King and his group, and we are the local affiliate, and we have been asked to appear in his behalf. I have not spoken to Dr. King, and don't know for sure that he is in town, although I understand from rumor that he is here.

THE COURT: What is your position about an application for temporary restraining order? Now, let me say this before you answer: As you know, Judge McRae drew this case, and the only reason the Court is entertaining this application for

restraining order is because he happens to be in Jackson, and at my discretion, of course, I can entertain it under these circumstances. If we issued the temporary restraining order, of course, there would have to be later a hearing on the application for temporary injunction, and I assume Judge McRae would hear that. Now, is it your position that the Court should not issue a restraining order at this time, even though we would set a hearing on the application for temporary injunction within the very near future?

MR. LUCAS: I think the Court should at least defer the issuance of any order at all, at least until we have had an opportunity to examine the complaint and consult with our clients. There may be a way to resolve this matter without any court action. I don't know.

THE COURT: You can always come in on a motion to dissolve.

MR. LUCAS: But that would give a two or three day delay, as I understand the rule.

THE COURT: Well, we can hear a motion to dissolve at any time.

MR. GIANOTTI: We will waive that, if it means anything, if Your Honor please, and we will be available on application.

MR. LUCAS: I would just like to suggest to the Court that the matter be delayed until later this afternoon at least, until we can read the Bill and consult with our clients in the matter.

THE COURT: Well, I think, Mr. Lucas, I can't see how you and your clients can be hurt by the Court issuing an order at this time, and we will tell you here and now that at such time as you desire to dissolve the restraining order, we will be glad to hear you, and we will interrupt anything else to hear you, but I think that it might be well to issue the order at this time, and it may be that if the Court issues the order at this time, and then you get together with Mr. Gianotti, you talk to your clients, and get together with Mr. Gianotti, we might be willing simply to leave it in effect until we can have the hearing on application for temporary injunction, in which case I assume there will be live witnesses on both sides and a real opportunity to go into the matter more fully.

MR. LUCAS: If I may speak, Your Honor, it seems to me there will be no irrevocable injury to the city to delay the hearing on the temporary restraining order until tomorrow.

THE COURT: In other words, you are asking the Court to delay until this afternoon before we issue?

MR. LUCAS: Or until tomorrow morning until we can consult with counsel and talk to our clients and find out what the basis is.

THE COURT: Well, Mr. Gianotti has outlined it pretty well, and I think we all know what is involved here.

What about that, Mr. Gianotti? Mr. Lucas says that he would like to have an opportunity to come into court either this afternoon or the first thing tomorrow morning.

MR. GIANOTTI: If Your Honor please, we think that can be handled on his motion to dissolve, and we will waive any notice and be available. We have four attorneys here, and if I am not available, Mr. Manire or Mr. Graves or Mr. Bartusch will be here, and we have more, if that is not enough, and we will be available. Now, on this uncertainty and

indefiniteness, we allege in this Bill that we have no information. We are guessing on the basis of statements made from day to day, and our last information was Friday. I have since learned since walking into this court this morning, that it is going to be Monday, and maybe counsel would give the Court some idea of when this parade is going to be. They could probably have it this afternoon.

THE COURT: I heard somewhere on the radio, I think, when I was out a few minutes ago that it had been put off until Monday, but, again, nothing official about it. What about that, Mr. Lucas?

MR. LUCAS: I have my information from the newspaper and radio, Your Honor, and that's one of the reasons why I need to consult with my clients.

MR. GIANOTTI: We will broaden the period by adding, during the period of this emergency; so we hope that will carry it off through at least Monday or Tuesday for that matter, but we will be available on motion to dissolve.

THE COURT: You will be right over there in the City Hall ready to come over at any time?

MR. GIANOTTI: Yes, sir.

THE COURT: All right, Mr. Lucas, I tell you what I am going to do -- I am going to sign the order, and if you want to move to dissolve this afternoon or any time tomorrow, we will be glad to hear you on an hour's notice.

MR. LUCAS: Thank you, Your Honor.

THE COURT: If you decide that you are not going to move to dissolve this afternoon or tomorrow morning, Mr. Lucas, we might set up a hearing on the application for temporary injunction.

MR. LUCAS: We will notify the Court immediately.

MR. GIANOTTI: We will have our petition ready to be filed any time within the ten days, you may be sure, or earlier, if you require.

MR. MANIRE: For the information of the Court, we have advised Mr. Lucas that we are available on behalf of the city if he wants to review this thing in any way and come together on some sort of ultimate supplemental order.

THE COURT: All right, sir.

(Off record discussion while order is signed.)

THE COURT: If that is all, Mr. Clerk, we
will adjourn court.

(ADJOURNMENT)

Thursday, April 4th, 1968

The hearing in the foregoing matter was resumed on this date, Thursday, April 4th, 1968, at 9:30 o'clock, a. m., when and where evidence was introduced and proceedings had as follows:

APPEARANCES:

For the Complainant: Frank B. Gianotti, Esquire
E. Brady Bartusch, Esquire
James M. Manire, Esquire
Frierson Graves, Esquire

For the Defendants: Lucius E. Burch, Jr., Esquire
W. J. Michael Cody, Esquire
David E. Daywood, Esquire
Charles F. Newman, Esquire
Louis R. Lucas, Esquire
Walter Bailey, Esquire

THE COURT: Before we get into the matter specially set this morning, are there any preliminary matters? I take it not.

This morning the Court was furnished copies of an answer filed by the defendants, a Motion for Advancement of Cause and for Dissolution or Modification of Restraining Order and a Motion to Allow Interdenominational Ministers Alliance to intervene as Amicus Curiae. Have copies of these pleadings been served on counsel for the City of Memphis?

MR. GIANOTTI: Yes, sir.

THE COURT: Is there any objection to the Motion to Allow the Ministers Alliance to intervene as Amicus Curiae?

MR. GIANOTTI: No, sir.

THE COURT: All right. Do you have an order ready on that?

MR. BURCH: Yes, Your Honor. Here is an order allowing the intervention. While I am at the rostrum, I will submit to the Court a memorandum of law, of which Mr. Gianotti has a copy.

THE COURT: All right, sir.

MR. BURCH: Now, if Your Honor please, purely because of the lack of time, I haven't been able to prepare a Motion for Intervention or for taking position Amicus with reference to the American Civil Liberties Union: so I would just like to put into the record the telegram received. It is directed to me.

(Reading) "You are hereby requested to enter the

defense of Dr. Martin Luther King and others in securing for them constitutional rights in court action pending against them in Memphis. You are authorized to, and in my name and the

name of Mr. Wolf, of counsel in the proceedings, to enter their names. We request that you enter this case on behalf of the American Civil Liberties Union and its Southern Regional Office.

Sincerely." That is signed, Charles Morgan, Jr., as Director of the Southern Regional Office of the American Civil Liberties Union in Atlanta.

THE COURT: Do you want to move orally for the intervention of the American Civil Liberties Union?

MR. BURCH: No, sir. I want to be allowed to insert their names as counsel on the pleadings which I have filed as of counsel.

THE COURT: I see. I notice you signed the answer along with Mr. Lucas and Mr. Bailey. You were signing in your capacity as attorney for the American Civil Liberties Union and aiding in the defense of the suit, is that right?

MR. BURCH: That is correct. But as his attorney at their request.

THE COURT: All right.

MR. GIANOTTI: I am sorry we are a little late on this memorandum, but we have it, Your Honor.

THE COURT: All right. If you will hand it

to the Marshal, Mr. Gianotti.

(Document handed to Marshal by Mr. Gianotti.)

THE COURT: All right. Now, I address this question to counsel for the defendants. Of course we had set this morning the motion of the defendants to dissolve the temporary restraining order issued by the Court on yesterday. Do you have witnesses that you intend to put on in support of your motion to dissolve?

MR. BURCH: Only two, Your Honor.

THE COURT: Among those witnesses, will you have either Dr. King, or someone authorized to speak for him and his organization?

MR. BURCH: Yes, sir. Mr. Young, who is on Dr. King's staff and is in charge of the arrangements that are made for and on behalf of Dr. King with respect to the marches, not only here but elsewhere, is here, and will testify.

THE COURT: And Mr. Young has complete authority from Dr. King and his organization to speak from him just as if Dr. King were on the witness stand himself, is that correct?

MR. BURCH: I believe that to be true, but let

me confer.

THE COURT: All right, sir.

MR. BURCH: That is true, Mr. Young?

MR. YOUNG: Yes, sir.

MR. BURCH: Mr. Young assures me that it is true.

THE COURT: Mr. Gianotti, on behalf of the City, I take it you have witnesses that you intend to put on in resistance to the motion to dissolve the temporary restraining order?

MR. GIANOTTI: Yes, sir.

THE COURT: In view of this situation, what would be wrong with treating this as, in effect, also a motion on the part of the City for a temporary injunction? In other words, we are going to have witnesses on both sides, and, of course, normally, you follow a restraining order with a temporary injunction of some kind. Is there any reason why we shouldn't treat it all as one hearing?

MR. GIANOTTI: It would appear to be duplication of effort as Your Honor indicated on yesterday. If Judge McRae should get back, I assume we might have to go through the same proceeding. I think it is a

good suggestion.

THE COURT: Both sides are ready to submit it as a temporary injunction on the part of the City as well as a motion to dissolve the restraining order on behalf of the defendants, right?

MR. BURCH: Yes, sir, I concur with what Mr. Gianotti said. I think it is a good idea.

THE COURT: Your complaint, as you filed it, I take it that you wanted -- ultimately wanted a temporary injunction?

MR. GIANOTTI: Yes, sir. I was just going by the book. Sometimes if you don't, somebody says something about it. I don't think Mr. Burch would in this case, but sometimes they do.

THE COURT: All right, sir. Gentlemen, of course, the Court has read the complaint, and has read the answer and the other pleadings filed by the defendants. We conferred at length yesterday with everybody present, counsel for the City and counsel for the defendants. So, the Court is pretty clear as to the issues involved here. However, if counsel desire to make some sort of opening statement, I would be glad to have it. Otherwise we will proceed right into the proof. What is your position on that, Mr. Gianotti?

MR. GIANOTTI: I thought we made a pretty full statement yesterday. Unless the Court has some question, I don't see any need for any further statement at this time. I have probably three witnesses here. I will try not to be redundant on any of the points. But we have three really different positions.

THE COURT: All right, sir. Mr. Burch, do you care to make an opening statement?

MR. BURCH: No, sir, I don't think the oratory of counsel on either side would add much to this matter this morning. Let's just go on with the proof.

THE COURT: All right. Mr. Gianotti, put on your first witness.

MR. GIANOTTI: Call Mr. Holloman.

FRANK C. HOLLOMAN

The said witness, having been first duly sworn,
testified as follows:

DIRECT EXAMINATION
BY MR. GIANOTTI:

Q Please state your name.

A Frank C. Holloman.

Q And what is your occupation?

A I am Director of the Division of Fire and Police
for the City of Memphis.

Q When did you accept this position?

A I took office on January the 1st, 1968.

Q Prior to that-time what was your occupation and
previous experience? Without my asking a lot of questions,
Mr. Holloman, just go ahead and give your background.

A For twenty-five years prior to July of 1964, I was
a Special Agent, Special Agent in charge and Inspector
of the Federal Bureau of Investigation. I retired from the
Federal Bureau of Investigation in July of 1964, after which
time I spent two years as Director of Development at
Memphis State University, and thereafter one year as
Executive Director of the Mid-South Medical Center, Council
for Comprehensive Health Planning.

Q Without going into too much detail, but at the same time in order to qualify you for the statements which you may hereafter make in the course of your examination and cross-examination, what is some of your background as a member of the Federal Bureau of Investigation? What were your duties and responsibilities and activities?

A As a member of the Federal Bureau of Investigation for many years I was a Special Agent of the FBI, in which capacity I was called upon to investigate violations of Federal laws. During a period of some seven or eight years I was an inspector in charge of the office of Mr. J. Edgar Hoover, in Washington, at which time it was my duties to serve him and to present to him all documents, mail, papers and material that came in to him and to handle visits to his office.

I also acted as Special Agent in charge of the offices of the FBI in Atlanta, Jackson, Mississippi, Cincinnati, Ohio, and Memphis, Tennessee.

Q Briefly, your educational background, please?

A I have a law degree, an LLB law degree from the University of Mississippi, and have been admitted to the practice of law in the State of Mississippi and in the State of Tennessee.

Q Now, Mr. Holloman, directing your attention to the matter under consideration, what was the first information that you had about a parade to be held or march to be held prior to the 28th of this past month, March?

A I do not recall the exact date, but it was a few days before March 22nd, 1968. I would say maybe a week or ten days. The information which I received was information that appeared in the local newspapers, information that was brought to my attention by citizens that a march, a massive march of this kind was scheduled by Dr. Martin Luther King and his associates and local associates on that date, which was a Friday. That was the first I heard of this.

Q After you received this information, what, if any, effort did you make to get some facts about what was likely to happen?

A I made efforts through various individuals to receive information as to the time of the march, the route that it would take, the individuals who would participate in it. I was unable to establish any direct communication with Dr. Martin Luther King or his associates, although I offered to meet with them and his local leaders at any time.

Q In the information that you received, will you state whether or not there was some information passed on to you

about whether children would attend school or not attend school on this day?

A The information which I received was in the form of a pamphlet, which was called to my attention, in which it was stated that Dr. Martin Luther King, Jr., and Community on the Move for Equality invited people -- this leaflet was passed out publicly -- to join a march on Friday, March 22nd, 1968, at 9:00 a. m., from Clayborn Temple A.M.E. Church, 280 Hernando. This leaflet, which I have, states "We ask you to stay away from work or school and walk with more than ten thousand people who want Memphis once and for all to learn that it must be a city for all people. A man is a man. God requires that a man be treated like a man."

Now, from the public statements that were made by Dr. Martin Luther King, as I read it in the local newspapers, and he spoke at a mass meeting the night before the proposed march, he did ask all of the school children, he or one of his representatives, asked the school children in Memphis to stay away from school and to join in the march.

Q Now, did you have any information about the size of the march, that is the name of the people who might be engaged in the march?

A I had no information concerning that, except the information which was in this leaflet, which stated more than ten thousand people. From the information which was available to me, which was that the school children would be asked to stay away from school, I could only anticipate that the crowd would number between ten thousand and fifty thousand people.

Q Now, you have been talking generally between March 22nd and March 28th. Is there any other statement you would like to make, Mr. Holloman, about events or occurrences between the 22nd and the 28th before you get to the 28th, because I don't want to cut you off if there is anything else, any other information you received of what might happen or was likely to happen or otherwise. You may go ahead and state what occurred in Memphis on the morning of March 28th in your own way without further questioning from counsel.

Q Your Honor, if I may, I would like to review as briefly as possible for the purpose of later testimony that I will make, the events leading up to March 28th, which was approximately seven weeks prior to that time, which I think has a very definite bearing. On the responsibility for the lives and safety of six hundred thousand people in

Memphis, my responsibility as Director of Fire and Police, some seven weeks before this March 28th there had been daily marches, or almost daily marches on the streets of Memphis, usually by two groups of individuals. There were those who were on strike, the sanitation workers. They marched, in the most part, peacefully, single file on the sidewalk, and we did not experience any difficulties.

Sometime after these marches began by the sanitation workers, we began to see marches beginning late in the afternoon after school time, 3:30, 4:30 or later, of numbers of students who were marching, and I might say that at no time was my office or I advised, or any requests made of us, regarding the sanitation marches or the student marches. In contrast to the sanitation marches, who had placards regarding the sanitation strike, and were, for the most part, orderly and peaceful, the students we found were completely disorderly. They ran up and down the streets. They knocked people, both Negroes and whites, knocked against them. They attempted to use force to keep people from shopping in the stores of Memphis. They ran up and down alleys. They did everything that I can consider possible to harass the citizens who were on the streets at the time and the police officers who attempted to maintain law and order and protect the citizens on our streets.

I might say that at no time did we refuse any of these people to march except on two occasions, the Friday and Saturday after March 28th, we did ask that the students not march. On Monday that restriction was no longer in effect and, as a matter of fact, there were students with the sanitation workers who marched on that particular occasion. During this entire time efforts were made to establish communication, so that we, so that I could assist in protection of those who were marching, and also to protect the citizens of our city and those who, I felt, had a right to also use the sidewalks and the streets.

Those efforts were unproductive. I understand that at one point Reverend Lawson was agreeable to a communication, a direct communication with me, but he was prohibited from such a contact or communication by other leaders in the community.

MR. BURCH: If Your Honor please, that could only rest on the sheerest surmise, speculation --

THE COURT: (Interposing) You are saying that's hearsay?

MR. BURCH: I think it is hearsay to the nth degree.

THE COURT: I agree with you. Objection

sustained. Go ahead.

THE WITNESS: I would like to say that in the position that I have taken -- I think this is important too, Your Honor -- as Director of Fire and Police, my only concern has been for the peace of this community. I am non-political, non-partisan. I only accepted this position after two weeks consideration, and as a citizen of the county and not the city, I had nothing to do with the recent election. I merely point that out, because I took this position only as I felt that it was an opportunity for me to assist in having Memphis a better place to live.

Now, after the strike began, there were daily meetings at the Union Hall, in which the ministers of the community did meet with members of the Union, at which time information, which was given to me, on which I might say I based my judgments at that time, and on which I will base my opinion today as to my testimony later --

BY MR. GIANOTTI:

Q May I interrupt at this point? In order to avoid any hearsay objection, if Your Honor please, I think the

statements that Mr. Holloman is about to make at this time can be verified by other witnesses who were present at that time, and with that understanding, I would like the Court to consider it in that light, and we will bring the witnesses in to verify it, if necessary.

MR. BURCH: If Your Honor please, I am not going to be picky about hearsay objections. We have not got any jury, and I know the Court will have a proper sense factor as to what is hearsay and what is not. I just wish he wouldn't get into what he has heard as rumors or report unless they are connected with Dr. King and others.

MR. GIANOTTI:- We will have an understanding, subject to Your Honor's approval, of course, that these things can be verified by witnesses, rather than take the time to bring them in here. If you want, we can bring them in.

MR. BURCH: That's perfectly reasonable.

THE COURT: Well, go ahead, and if we need that, we will get into it. Go ahead.

BY MR. GIANOTTI:

Q Go ahead, Mr. Holloman.

A These daily meetings were held at the Union Hall.

There were also nightly mass meetings at various Negro churches in the community. Representatives of my department who were present advised me that there were threats made against the safety and the peace of the City of Memphis. There were even statements made that, if necessary, they were prepared to burn the city, and in other fashions, the statements and the speeches that were made were emotion-stirring speeches.

In regard to the first scheduled march on March 22nd, as I have stated, there was no communication. The only information which I had was a leaflet from which I have read and from statements that I read in the newspapers.

MR. GIANOTTI: May we, at this time, before we overlook it, make that an exhibit to Mr. Holloman's testimony? May we make it Exhibit 1?

MR. BURCH: May I see exactly what we have?

(Document handed to Mr. Burch.)

MR. BURCH: No objection whatever.

THE COURT: Make that Exhibit 1.

(Whereupon, the document above referred to was marked Exhibit 1 to the testimony of the witness, and same will be found among the exhibits hereto.)

BY MR. GIANOTTI:

Q Go ahead, Mr. Holloman.

A The night before the proposed march of March 22nd, which was later canceled because of the snow storm, I read in the newspapers regarding Dr. King's speech at a mass meeting, at which time there was some ten thousand people estimated to be at Mason Temple. At that time he, or his representatives, requested school students to practice truancy on the day of the march and to join in the march. It was also asked that all Negro workers in the City of Memphis stay away from their jobs and join in this massive march. Based on the surmising, and I was in a position of surmising or guessing as to what was going to happen March 22nd, based upon what we had heard and the data which was public knowledge, I took it upon myself without any request from Dr. King or his representatives to declare that after midnight on March 21st, there would be no parking on Second Street from Poplar to Beale Street; that there would be no parking on Main Street from Beale to Poplar; that there would be no cross traffic after the march had started between Poplar and Beale Streets, between Second and Main Streets.

I received a great deal, a number of telephone

...ls criticizing me severely for interfering with the
ade, commerce and travel of people. Then, because of
he very heavy snow storm on that day, that march was not
held. In regard to the march that was scheduled for
March 28th, I did not have any information. There were
no leaflets. There was no communication, although I
attempted to establish direct communication.

In order to determine again the numbers who
might be expected, the route, the time and other pertinent
information on which I had to base a decision in order to
maintain law and order in the City of Memphis at that
time. Receiving no information of that kind, but knowing
that the school children had again been requested to stay
out of school and workers had been requested to stay away
from their jobs and join the march, I prepared for a massive
march of from ten to fifty thousand people.

I, again, upon my own authority, without any
request from anyone, again made the same plans that we had
made for March 22nd, so far as no parking, the movement of
traffic and other things. I even went to the extent of
providing at the City Hall a microphone and a loud speaker
system to be installed in order that Dr. King could make
his speech at that point, if he desired. During this

entire time in our preparations, we received -- we received many telephone calls and much information that the route that had been planned before would not be followed. As a matter of fact, Reverend Lawson, even at the beginning of the march, stated to one of my officers that the route of the march might be changed. Reverend Abernathy, on the night of March 27th at a mass meeting again called on the school children and all Negro workers to join the march.

On the morning of March 28, 1967, radio reports began to come in to us, based on information received from citizens and also from our own observation, that school children were truant from many of the Negro schools; that they began to march, some orderly and some disorderly, toward the point of the assembly of the march.

We were advised that school children enroute were picking up bottles and rocks and were bringing them with them toward the assembly point. We learned that the truancy or the absenteeism of the students on that morning was more than twenty-two thousand Negro students. At Hamilton High School a group of four to five hundred children were in the street. They were disorderly. They were boisterous. They threatened the peace, and upon a call which we received, we responded.

Upon our officers arriving on the scene, they were attacked. They were attacked with bricks and bottles. Two of our officers were injured. Order was restored by the threat of the use of gas. We had also received information from several sources, reliable sources, both from observation and otherwise, that certain members of the community and specifically in some cases members of a Black Power group in Memphis who called themselves "The Invaders" were at the various schools, or at some of the schools blocking the schools and threatening the students if they did not absent themselves from the school and join in the march.

Earlier on that date, I communicated with certain citizens whom I knew to be in direct contact with Reverend Lawson, and communicated this same information, which I have just testified to, to him, and asked him in view of the fact that I had been unable to establish communication, to pass along this information, which, to me, was a threat against the peace of this community.

I advised that the situation to me was a very dangerous, a very volatile situation. I had also received information that certain ministers in the community were present at some of the schools in order to encourage the

students to practice truancy and to remain away from school and to join in the march.

On the morning of March 28th at 11:05 a. m., the march began with Dr. King leading the march. From our information at that particular time as to the immediate area in which the march started, there were some five to six thousand people assembled. A number of these marchers had in their hands placards, which had been placed on sticks approximately three feet long. We also received direct information that a number of the marchers had obtained from abandoned beds, the bedsteads and other iron pieces of weapons. At 11:30 a. m., we received information that window breaking and looting had begun at Hernando and Beale.

This looting and this breaking of windows was taking place in the immediate area where Dr. King was marching. To my knowledge, Dr. King at no time attempted to stop this unlawful activity. At one point during the march, when it appeared that a riot was occurring, Assistant Chief Lux gave the bull horn to Dr. Lawson, to Reverend Lawson, to see whether or not he could restore order to the situation.

At Beale and Main I was advised by radio that Dr. King had left the march and the area, and that those people who were in the march, who were left in the march,

were still pressing and making the turn on Main and had attempted to go as far north as Gayoso Street. In view of the situation, and in view of the large number of people who were involved, I made the decision at 11:35 a. m. to ask for assistance from the Tennessee National Guard, and also assistance from the Tennessee Highway Patrol, and as a result, some four thousand troops of the National Guard moved into Memphis, some two hundred and fifty members of the Tennessee Highway Patrol, and some one hundred members of the Sheriff's Department.

From that time until 12:30 a. m., looting and rioting conditions existed in the western part of the city, and only at approximately 12:30 a. m., after the National Guard had arrived and were able to secure certain critical areas, was any semblance of order returned to our city.

As a result of this immediate rioting condition, some sixty-four citizens were injured, nine officers were injured, and two hundred and twenty-five were arrested. There were five hundred and seventeen fires for a four-day period as compared to an average of a hundred and forty or two hundred during that same period. It was estimated by insurance officials that the minimum damage which had been done was four hundred thousand dollars.

We received many calls from the citizens throughout the city that they were harassed, and they feared for their lives. After Dr. King left the march, Dr. King went to the Rivermont Hotel, at which time he met with three members of the Black Power group who called themselves "The Invaders".

That afternoon a curfew was placed in effect in the City of Memphis, which affected every citizen of this city.

Q At that point, Mr. Holloman, would you briefly detail some of the rules and what happened for the record, when you established the curfew hour? I know Judge Brown sort of knows this, but we would like to have something in the record on that point.

A The provisions of the curfew were that a state of emergency existed in the City of Memphis, and the curfew was issued by the Mayor, declaring the state of emergency prohibiting people from moving upon the streets of Memphis between the hours of 7:00 p. m. and 5:00 a. m., unless they had legitimate reasons to be there, or if there was an emergency, or for health purposes. All liquor stores that sold whiskey and intoxicating liquors were closed, as well as those stores which sold guns and ammunition, and also all

taverns where liquor could be consumed.

Q Would you state whether there was any confusion in the minds of the people about the operation of a curfew?

A Although we attempted to advise through the press the provisions of the curfew, there was mass confusion on the part of the citizens, and our switchboard at times was -- well, it was impossible to get a call through for twenty to thirty minutes, and I know that we must have received later a lot of calls as to crime being committed because of the fact that our switchboard was jammed because of the efforts of the citizens to ascertain the exact provisions of the curfew.

As to the proposed march that Dr. King and his associates --

Q (Interrupting) Pardon me. You touched on the damage. Do you have in your file some pictures of the damage?

A I have in my possession photographs which were taken, I would say, in the neighborhood of 12:00 to 12:30 p. m. on that date as to the extent of the damage.

Q Would you hand the Judge those pictures, and we may introduce four or five of them as a group exhibit to your testimony, Collective Exhibit 2.

MR. BURCH: May I see those, Your Honor?

(Photographs handed to Mr. Burch.)

BY MR. GIANOTTI:

Q Mr. Holloman, you said how many troops and how many sheriffs and if you said how many policemen were on duty that day, I did not hear it. Would you please state how many policemen were on duty on the morning of March 28th?

A On the morning of March 28th in the immediate area where the march was to take place, we committed all available police officers without leaving unprotected the other parts of the city, in the number of three hundred, approximately three hundred.

Q Why did you have so many policemen in advance of this parade? What prompted this placement of such a large force of men in the downtown area?

A Your Honor, I was convinced that with an anticipated mass march of ten thousand to fifty thousand, we were attempting to every way possible to commit all available strength, yet taking Dr. Martin Luther King's word that it would be peaceful, and we attempted to use these individuals, and most of them who were committed were those to control the traffic situation to see there would be no traffic on Main or Second, and to keep cross traffic out and to keep the traffic moving.

Q What ideas of protection did you have in mind? That is what groups of people were being protected by this action on your part?

A Our greatest concern was the safety of Dr. Martin Luther King and Reverend Lawson and Dr. King's representatives. We had received numbers of telephone calls from various citizens who had stated that Dr. Martin Luther King would not live through this march, and my official greatest concern that morning was for the safety of Dr. Martin Luther King and his associates.

Q I think that fills in the matters, and we would like at this point to return to your affidavit.

A With regard to the proposed march for either this week or next week, I had been advised that all school children in Memphis had again been requested to be truant on that date and not to go to school, but to join the march. I might say that this massive use of students has me very much concerned, because although on Thursday when the previous march was attempted, there were in excess of twenty-two thousand Negro students who were absent from school that day, the following day there were some fifty thousand Negro students who were absent.

With what has happened, and the emotional appeal that has been made for this to be a massive march,

with even people being invited to come into this area from all over the United States in order to join this march, I am unable at this time to estimate, and I don't think that anyone can estimate the number of people who will be in any proposed march at this time. WLOK on yesterday made an announcement inviting school children to appear at the meeting last night. From information which I have received from public sources and otherwise, all Negro workers have been requested to take a holiday tomorrow or on the date of this particular march, whether it is tomorrow or Monday, or whenever it is, and to join this massive march.

There has been a call for nationwide response from Union members throughout the United States, and in one newspaper article I saw that it has been estimated that at least six thousand Union representatives from throughout the United States were flying, moving into, traveling into Memphis for the purpose of joining this particular march. The statement was made that at least one thousand had been committed from New York. I, from my experience, am very much concerned about any proposed march. I think the leaders in their public statements have even said that they admit that there is no way to control the number of people who would join in a march that is proposed. I might say that

I am considering, as far as this particular march, which is proposed is concerned, that contrary to statements that Dr. Martin Luther King has made publicly, that no representative of his was here in advance of the last march, and, therefore, he did not have an opportunity to organize it in order to control it. His representatives were in Memphis prior to the march of March 28th, and he has stated publicly that he did not know that there were certain groups who were committed to violence. If he did not know this, then it was --

Q (Interrupting) Just a minute. Just state the facts.

MR. BURCH: I think that's getting to be argument.

THE COURT: All right.

THE WITNESS: I was leading up to this statement of fact; that the Black Power individuals have been and are still active at Clayborn Temple. Mr. Roy Wilkins, in a newspaper article of last evening, and this I have to take as fact, stated that there are always some mavericks in any large group. He stated, "I hope it won't happen, but if you get hundreds of people emotionally wrought up, it's hard for a few leaders to control them." The headline is "Wilkins doubts King can control march."

Senator Brooke has made similar statements. We have received information that the Ku Klux Klan, and this is from a member of the Ku Klux Klan, that a march by the Ku Klux Klan will be scheduled and carried out on the date that this march will take place.

The white citizens of Memphis, in letters to me and telephone calls to me, are greatly agitated at the present time. There was a theft from a sporting goods store last evening of guns and ammunition. We have received definite information that Negroes have been buying guns and ammunition in wholesale in our adjoining State of Arkansas. I am very much concerned for the welfare of Dr. King, Reverend Lawson and the other leaders of any proposed march, in view of the reports and rumors and threats against their lives.

The responsibility for six hundred thousand people in the City of Memphis, both Negro and white, is the awesome responsibility that I have.

I would like to make the following specific and enumerated statements about a march that might be proposed based on what I have said leading you to this point.

BY MR. GIANOTTI:

Q May I ask if this is also based on your previous experience as a law enforcement officer?

A Yes, sir.

Q In other words, you are about to give your opinion on what you understand the facts to be in this instance, and your opinion as a law enforcement officer regarding this?

A Yes. No. 1, I am convinced that Dr. Martin Luther King, his leaders or any others cannot control a massive march of this kind in this city or elsewhere.

Q You say you are convinced that they could do it?

A They could not.

Q Go ahead.

A No. 2, I think a march of this kind will lead to lawless acts in other parts of the city, and when I say lawless acts, I mean looting and rioting in other parts of the city during the time of the march.

No. 3, I am very much concerned and feel that there is great likelihood that there will be rioting and looting and lawless acts after the march has been completed and Dr. King and his associates have left our city.

No. 4, I base this opinion on the fact that in my opinion and from information which I have received,

march.

No. 5, I fear for the safety of the people of Memphis in view of public statements which have been made as recently as last evening, which indicated feeling of lawlessness and disrespect for law and order -- that the march proposed will be held regardless of the action of this Court or any other Court.

Q At that point, Mr. Holloman, who is supposed to have made that remark?

A As I recall, it was made by Dr. King.

Q Go ahead. You may proceed.

A As a matter of fact, I might quote from the morning newspaper in which Dr. Martin Luther King told people at Mason Temple last night, "If the police dogs and fire hoses in Alabama couldn't stop us, an injunction in Memphis, Tennessee, can't."

No. 6, I am convinced from speaking to various leaders, either directly or indirectly, that they, themselves, are convinced that they are unable to control a massive march of this kind.

No. 7, from the information which I have and from my experience, I am of the opinion that the safety of the leaders is in immediate danger and even their lives are

in danger.

No. 8, although we might have some indication of the size of the march when it begins as to the complexion of the march when it begins, no one can control the bystanders along the way who will join in the march, either to join peacefully in the march or otherwise, or to interfere with the march.

No. 9, as indicated, there is no way to limit the number of marchers, and I believe their leaders will agree with that statement.

No. 10, a march of this massive kind will tie up traffic, trade and travel in the City of Memphis for a considerable period of time.

No. 11, I fear for the lives and the property of the citizens of Memphis during the march, and I base that on what happened last week.

No. 12, I am fearful for any march of any kind because of the fact that I think that Dr. King and his leaders are unable to control a massive march of this kind.

No. 13, I fear for a march of this massiveness because of the fact that for several weeks the Negro youths of this community have been furnished with specific instructions as to how to make and manufacture "Molotov cocktail:

and fire bombs. The evidence of that I have in my hands with a drawing which has been distributed as to how a "Molotov cocktail" should be prepared.

No. 14, the supporters of this march have stated that we have a situation here that has never existed in any other city in the United States, and that the result could be worse than Watts or worse than Detroit.

I do not feel that with -- and this is my opinion, sir -- that with the police force which we have and which we can commit only three to four hundred officers at one time, I do not feel that we have sufficient personnel in our Police Department to safeguard the lives of the individuals or the others that I have mentioned in these specific items for a massive march of this kind, and I feel that any march of any kind, if it takes place, will need the assistance of the National Guard or Federal troops.

I feel that there is a clear and present danger to the citizens of this city, Negro and white alike. On the basis of what I have testified to and the opinions which I have expressed, I personally ask that consideration be given to a petition for a temporary restraining order and injunction requesting that no march of any kind be conducted in Memphis at this time under these circumstances.

MR. GIANOTTI: If Your Honor please, with reference to what Mr. Holloman talked about, I would like these two items, and attached to it also is three or four pages, which I don't think are pertinent -- I do not offer these four pages of written matter here, a lot of matter about the strike and various things, which I don't believe are particularly pertinent, unless Mr. Holloman wants to sift through it -- but we do ask that the diagrams that have been handed to the Court be entered as Collective Exhibit No. 3.

MR. BURCH: Is this the Black Power business and the "Molotov cocktail"?

MR. GIANOTTI: Yes, sir.

MR. BURCH: I have no objection to this as an exhibit, and may I see the other?

MR. GIANOTTI: This, we are not offering (indicating), and I haven't had a chance to read it myself.

THE COURT: Go ahead and mark the diagrams as the next exhibit.

MR. GIANOTTI: It will be Exhibit 3, I think, Your Honor.

(Whereupon, the documents above referred to were marked Collective Exhibit 3 to the testimony of the witness, and same will be found among the exhibits hereto.)

BY MR. GIANOTTI:

Q Is there anything further you would like to add, Mr. Holloman?

A No, sir.

MR. GIANOTTI: You may cross-examine.

CROSS-EXAMINATION
BY MR. BURCH:

Q Mr. Holloman, from your testimony, you have established very superior qualifications by reason of education and experience as a police officer. That's conceded. Anybody that heard it would be impressed with it. You are an educated man, aren't you?

A I consider myself an educated man from the testimony which I have given.

Q And, as you have stated, as a trained and experienced police officer, you are as informed as, at least, as much as the average police officer of the major social problems that can result from violence in the cities, aren't you?

A Yes, sir.

Q Are you aware that not just in Memphis, but in every metropolitan community which has a large population of Negroes, there are very many who feel that they have social grievances that they can only express through marches and demonstrations?

A I have been so advised.

Q And you know that that is the pattern, not just here, but everywhere where there are large concentrations of Negroes?

A I have been so advised, sir.

Q Now, are you also advised that in those communities that various solutions have been propounded by different groups? For instance, some groups are noticeably violent and advocate violence -- you know that, don't you?

A Yes, sir.

Q As a matter of fact, this instrument that has been furnished me just a moment ago by Mr. Gianotti, it contains a letter from H. Rap Brown in prison, and it is a very violent invitation and urge to violence on the part of the Negro community, is it not?

A Yes, sir.

Q And you know there are other groups, Black Power groups, that say that the Negro can never live in peaceful

coexistence with the white man and advocates a reverse, apartheid doctrine?

A Yes.

Q Now, on the other hand, you know there are groups in the Negro community, while wishing to resort to the only methods of expression that are available to them by marches and demonstrations and boycotts and things of that sort, assert that this should be done on a non-violent basis?

A Yes, sir, I do know that to be a fact, and I admire some of the leaders here in Memphis who have advocated that very thing.

Q And do you know that Dr. Martin Luther King has received the highest civil honor that can be accorded a citizen in that he is a Nobel Laureate, having been recognized for his efforts in behalf of peace -- you know that?

A I only know that he is a Nobel Peace Prize winner. What his work was or why it was given to him, I am not aware.

Q You do know that whoever awarded the Nobel Prize at the time thought that he had made the most outstanding contribution in the world at that time to peace -- that

was what the prize was for -- you know that, don't you?

A I presume that is true. I do not know it, sir.

Q And in your study of these various movements that have been involved and are factors in the life of every large community, have you not found that Dr. Martin Luther King has always been identified with non-violence?

A That has been his contention, and I have no evidence to believe otherwise.

Q Thank you sir.

Now, you read the matters that were in the newspaper that Dr. King had been invited here to lead a march which was, in reality, an extension of an existing labor dispute, didn't you?

A I cannot say that I read that it was an extension of the local labor movement, or whether or not it was a march for racial protest, sir.

Q Let me review the chronology with you and see if we can't arrive at that conclusion. You do know that some thirteen or fourteen hundred sanitation workers were out on strike?

A Yes, sir.

Q You do know that the Negro ministers association took up that cause and began to organize the Negro community

in support of that grievance?

A Yes.

Q And you know that the next step of the Negro ministers association, which Reverend Lawson was a prominent factor in, was to invite Dr. Martin Luther King to take part in that march?

A Right. But as to his motive in asking him, I cannot answer the motive in asking him to come to Memphis.

Q But the chronology is as I have stated?

A Yes, sir, that is correct.

Q Now, you want to get down to the violence, and who was responsible for it, and how it occurred. Have you with you the log of the Police Department of the events on that day?

A No, sir.

Q Well, it was in your knowledge that episodes of violence had commenced to occur several hours before Dr. Martin Luther King reached the City of Memphis?

A Only at one place, as I recall, and that was at Hamilton High School, and which information was immediately given to intermediaries to the leaders of the march.

Q Let me just ask you if the log is in accordance with your recollection of events as they transpired on that

unfortunate morning -- at 8:30 --

MR. GIANOTTI: Pardon me. Are you reading from the Press Scimitar or Commercial Appeal?

MR. BURCH: Commercial Appeal. Does it make any difference?

MR. GIANOTTI: No. I just wanted to know in case I wanted to ask some questions about it I would know what you were using.

BY MR. BURCH:

Q "A partial log of police radio calls gives a picture of how yesterday's violence progressed.

"A. M. -- 8:30: Helicopter 201 reported students gathering at Hamilton High School.

"8:55: Cars called to check disturbance at Lester School.

"9:00: Helicopter said group of 200 to 300 students going west on Kerr from Hamilton all in street blocking traffic.

"9:01: Part of Hamilton group went behind buildings on Kerr and picked up stones and bottles.

"9:08: Students at Hamilton began attacking officers on scene with bricks and bottles.

"9:09: Additional cars ordered to Hamilton School.

"9:10: Police Chief J. C. MacDonald ordered cars at Hamilton School to move back from crowd.

"9:11: Group of 150-200 reported moving north on Englewood from Trigg, street blocked.

"9:12: Helo 201 ordered officers to assist other officers being attacked with bricks and bottles at Hamilton.

"9:14: Students at Hamilton moved back, then surged in another attack on officers.

"9:14: Chief MacDonald asked officers at Hamilton if they had done everything they could do. Response affirmative.

"9:14: MacDonald ordered officers to use tear gas at Hamilton if necessary.

"9:15: All cars alert broadcast.

"9:16: Helo 201 said group at Hamilton scattering. Chief MacDonald then said pull men back, don't charge the crowd.

"9:17: Ambulance requested for Hamilton High School, two reported injured."

Well, to save reading all the way down to where Dr. Martin Luther King appeared on the scene, I am going to just ask you to look at that log and see if there are any major corrections that you would make in it before I make it an exhibit in the record?

I have assumed that it is substantially correct.

A Do you want me to read the whole log?

Q Just scan it and see if that doesn't look to you about what happened that morning?..

A I would say that what you have said is an accurate highlight of the events of that morning.

Q So, to save me reading this and taking up the Court's time and your time in reading each one of those events, just read there and see if that doesn't give a fair account of how the situation looked that day through the eyes of the Police Department.

A At 11:27 it says, "Chief Lux said march seems to have no leader at this point. The Reverend Lawson and Dr. King asked for police car to take them from the area." I cannot testify to that.

Q Well, of course, as far as you are concerned, ninety-nine percent of that is hearsay. I am just asking you if that isn't substantially the information about the events that you have gathered from the police log?

A You want me to go all the way through it or up to the time of the actual rioting?

Q Just to the time of the rioting. Stop there.

A I would say up until 11:30 it seems that this is a fairly accurate highlight of what happened.

MR. BURCH: Thank you, sir. May that be marked as Exhibit 4, please?

THE COURT: Yes, sir.

(The document above referred to was marked Exhibit 4 to the testimony of the witness, and same will be found among the exhibits hereto.)

BY MR. BURCH:

Q Now, Mr. Holloman, as you were quoted in the newspaper, again the Commercial Appeal, on Friday morning, March the 29th, you know that this violence resulted from the acts of the few people who were not associated with the march, but who were on the periphery or on the side of the march, and there was a very small number of youths that started the

violence?

A They were a part of the march. Any statement that I have made to the contrary, they were a part of the march itself. They were in the line of the march. How many it was, frankly, I don't know. As was reported to me, there were probably a hundred to two hundred involved.

Q Not over two hundred, would you say?

A I would say not over two hundred from the information that I have, in that immediate area.

Q And is it also true, and is it a fact as stated by you that the march was an orderly one until these approximately two hundred youths, many of whom appeared to have been drinking separated themselves from the main body of the march and commenced this trouble?

A As I understood it, at that particular time and with the information which I had at that particular time, the statement that I made to the paper would have been correct. Now, I have received information since that time, which I would have to say it would change my opinion as to whether or not this march was ever orderly or not, and Assistant Chief Lux, who was actually on the scene, will be in a position to testify regarding that, sir.

Q Well, let's not give the Commercial Appeal all the business. Let's go to the Press Scimitar now and see if Mr. Chastain's article which appeared on March 29th is in accordance with your present information as to how this violence started. I will leave out Mr. Chastain's personal feelings about it, as interesting as they are.

We will start with, "The swelled ranks of marchers had crossed Second Street and were less than a block away.

"It was peaceful at this point, but we had received an eerie foreboding of what was about to happen only a few minutes before. About five or six teen-agers -- clad in a gaudy array of bright yellows, blues and purples -- ran ahead of the marchers and began shaking the scaffold upon which we were standing.

"'Shake those whiteys off of there -- knock them down --'

"But about four police cars pulled into the area and the youths ran back to join the marchers which were about a block and a half away at that point.

"The police cars then pulled back to Main Street

to make room for the marchers. When the marchers reached the 100 block of Beale, we gazed over the heads of a sea of white signs with black letters proclaiming: 'Today, I am a Man.'

"Then, it began.

"A barrage of clubs cascaded through the air from the south side of Beale and sailed over the heads of the marchers to smash display windows at Uncle Sam's Pawn Shop, 112 Beale, and Adams Hats, 114 Beale.

"Shrill cries punctuated the air:

"'Smith that glass, break them, bring it down -- burn it down baby.'

"Youths walking on the sidewalk on one side of the street would throw the clubs over the heads of the marchers to break windows on the other side of the street instead of breaking windows on their side of the street."

Now, as far as you now know and the information that you have received from these many excellent sources that are available to you, is Mr. Chastain's account about how it happened?

A I don't feel like I am as qualified to answer to Mr. Chastain's observations as the individual who was actually in the melee, who is Assistant Chief Lux. I was not there.

Q Well, you have quoted many sources throughout your testimony without any objection from me giving the basis of your understanding and belief. I am asking you on the basis of all the information that you have at this point is Mr. Chastain's account substantially accurate?

A I would say that the main marchers, Dr. King and Reverend Lawson and those in his immediate area, did not take part in the rioting and looting. Now, as to whether or not they threw sticks across the street and so forth, I do not know. The only thing I can say is that I do feel that only a small portion of the people were involved in the acts of violence, sir.

Q Now, you say that you never knew which way the march was going. It's not highly material, but I would like to correct the record, if it should be corrected, about that. You did have information as to how the march was going, both verbally and in writing?

A I had it verbally. We had information, which we did not know, and which later on also confirmed the fact,

as a last resort, and this minister asked Reverend Lawson if the march would go as the one before. At that time he said yes, and this information was given back to me, and it was on the basis of this indirect information in the face of the rumors, however, that I went ahead and prepared, and that's the only reason that I prepared as I did before.

Q This minister was Mr. Lux's pastor?

A Yes, sir, as I understand it, sir, someone known to him -- I presume it was his pastor.

Q And he told you that he had gotten that from Reverend Lawson -- Reverend Lawson was quoted to that?

A Yes.

Q And did you not, on the morning of the march, at 8:15 call Mr. David Caywood, who was the President of West Tennessee Civil Liberties Union, and has been associated with the Tennessee Regional Conference, and ask him to ascertain the route, and didn't he report back to you that he had called Reverend Lawson, and that Reverend Lawson had told him that you had already sufficiently blocked the traffic on the streets that would be involved, and didn't you say then, in substance, "Thanks. Now, I can tell the newspaper."? Didn't that happen, or that, in substance?

A No, sir. I did not say that I would advise the

newspaper, because at that particular time I was concerned with the peace and order of this community. I did communicate with Mr. David Caywood, and, to the best of my knowledge, he gave me information which gave me reason to believe, to think that the march would proceed as we had planned, but I still did not at any time, as I testified previously, I never got any direct word from the leaders, Dr. King or his associates, and that was my testimony -- how I meant for my testimony to sound, sir.

Q Well, in this careful investigation that you made, and I concede that it was careful and thorough, I have no complaint about anything that you did to cause any violence in this march -- I haven't heard of any -- but did you also in the investigation find written march instructions, and did you find the route set out in writing, and did you get the written instructions to the marshals, to the parade marchers and marshals as set out in this piece of writing I am going to show you?

A No, sir. This is the same thing that I gave to you, and there is no indication here as to -- this was the piece that I introduced for the march of the week before, the proposed march of the week before. I did not receive any of this with any understanding that this was the area,

and I don't see here that it was March 28th march on here. But I don't recall -- as a matter of fact, I did not see any of these pamphlets between March 22nd and March 28th.

Q You were not informed by Mr. Lux through his pastor, Chief Lux, through his pastor, you were not informed by Mr. Caywood, you were not informed by anybody that these instructions still held?

A The only information, as I testified to a few moments ago, is that they said the march would take the route that had been planned before, yes, sir.

Q And you did make the preparations by freeing the area of traffic, and the march did proceed as far as it went along that route?

A Yes, sir.

Q Now, you have made statements of information coming to you that a group had appeared at Clayborn Temple, and perhaps other places, saying that they were prepared to burn the town down, that, or that in substance?

A There and in the Union Hall also, yes, sir. As a matter of fact, the information which I received was that Reverend Ezekiel Bell on one occasion said that if necessary he would be willing to assist in burning the city down.

Q Have you ever heard any statement of violence attributed

to any of the defendants who are in the court this morning?

A No, sir. Not that I can recall.

Q Have you heard statements attributed to them that they were against violence, many statements that they were unalterably opposed to violence?

A Yes, sir.

Q Now, I gather from your testimony that you would rather not have any march at all?

A Yes, sir.

Q Now, you realize, of course, that if the Court grants the relief that the city has sought this morning, that there is no injunction sought against the holding of a march, the injunction is merely to prevent Dr. Martin Luther King, and I believe some six or seven other individuals, from participating in the march?

MR. GRAVES: If Your Honor please, I think that the injunction would follow Rule 65, which would mean all those, their agents, servants, employees, attorneys and all those in concert with them would be enjoined.

THE COURT: The file does say it is against those individuals and those acting in concert.

MR. BURCH: Well, of course, the Court will have to decide this, but I want to state my position to the witness, so I can question him. Assuming that the city obtained all the relief that it seeks, I would have to advise any person that asked me, who I felt a duty to express an opinion to, that any person who wishes to march, and is not doing so under the dominion and in concert and subject to the plans and urgings of Dr. King would have a perfect right to march.

Now, assuming that I am right about that, Mr. Holloman, -- I am not asking you to agree that I am -- but assuming that I am right and that there is going to be a march led by somebody on the date scheduled -- now, you are with me on that assumption, aren't you?

A Yes, sir.

Q Would you rather have that march occur when it is under the leadership of people who have an established conviction for non-violence and a strong self-interest in maintaining non-violence, or would you rather have that vacuum filled by Rap Brown, who, up until now, is not in the proceedings or in the community, or some other person like him?

MR. GIANOTTI: Just a minute, may it please the Court. I want to object to that on this ground: That Mr. Burch's question presupposes the fact that other people may start out on a disorderly type of activity, and that these people have a right under some amendment to the constitution, I assume, to freely express their opinions, versus the fact that Mr. Holloman's duty is to maintain law and order under other constitutional provisions, and this is a legal question that Your Honor is going to decide as to whether there is a so-called overriding of the First Amendment versus the police power.

So, on that basis, I think there is a fallacy in Mr. Burch's question which makes it impossible for this witness to answer. In the first place, it is a legal question.

THE COURT: Of course, Mr. Burch is asking the witness to assume a legal proposition, which is that if the Court gave the city continuing relief that it has already gotten, which would be to enjoin the defendants and all those acting in concert with them from carrying out this march, but if, assuming further, that other people

completely unconnected with the defendants proceeded to have a march or demonstration on Monday, would he rather have that demonstration or march led by Dr. Martin Luther King, or would he rather have it without Dr. King. That's the way I understand the question.

MR. BURCH: That is my question, if Your Honor please, and I believe it is a perfectly legitimate question. If nothing else, this is not the best reason for it, but in the course of cross-examination, to test the credibility of the witness.

THE COURT: Put it another way: Suppose, Mr. Holloman, that the Court made the present restraining order into a temporary injunction so it would be in effect Monday, and suppose the Court having taken that action, Dr. King and his associates said that they were going to obey the injunction of the Court and were going to disassociate themselves from this march that is going to take place Monday, and pack up and go back to Atlanta, and then others, presumably would not then be acting in concert with Dr. King and his associates, proceeded to carry out some sort of march or demonstration Monday, do you think that that

would be a better situation that it would be to have the march carried out Monday with Dr. King and his people at least in leadership under some court-imposed special restrictions?

THE WITNESS: No, sir, I do not. I think if we have a choice between, if we had the choice between, and I had to make an opinion as to whether Mr. Rap Brown and Mr. Stockley Carmichael should lead a massive march in Memphis or whether Dr. King and his associates lead a massive march, I would prefer a march led by Dr. King and his associates.

THE COURT: All right, sir. Is that the question that you had in mind, Mr. Burch?

MR. BURCH: Yes, sir; that was an adequate answer to it.

Q Now, were you in court when Mr. Gianotti applied for the temporary restraining order?

A Yes, sir.

Q Did you hear the colloquy between the Court and Mr. Gianotti in which the question of the Court's jurisdiction as to diversity of citizenship was concerned?

A Yes, sir.

Q Were you in court when the Court asked the City Attorney

if "Acting in concert" applied only to out-of-state persons in order to preserve the diversity question, and that Mr. Gianotti advised the Court that it was so limited?

A I think, as I recall the conversation that happened was that when the question was asked of him, he did make that statement, but after that he made other statements and other counsel made other statements in regard to those acting in concert.

Q Well, the record will reflect, and the Court will know, and as to that, you have the advantage of me, because I, as you know, recently came into the case.

A That's to the best of my knowledge, yes, sir.

MR. BURCH: Excuse me, Your Honor. I think I am through.

THE COURT: All right, sir.

MR. BURCH: Thank you, Mr. Holloman.

MR. GIANOTTI: Thank you, Mr. Holloman.

THE COURT: Gentlemen, I believe we ought to have a recess here. I might say to the guests we have today that we have a snack bar in the basement and on the seventh floor.

You may step down, Mr. Holloman.

(WITNESS EXCUSED)

(RECESS)

THE COURT: Mr. Gianotti, call your next witness.

MR. GIANOTTI: Call Chief MacDonald.

J. C. MacDONALD

The said witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. GIANOTTI:

- Q This is J. C. MacDonald?
- A J. C. MacDonald, yes, sir.
- Q And you are Chief of Police in the City of Memphis?
- A That's right.
- Q And you have been for how many years?
- A Fourteen years.
- Q And, prior to that time, how many years experience did you have as a police officer?
- A Twenty-eight years.
- Q Altogether twenty-eight years?
- A Yes, sir.
- Q Chief MacDonald, you have been in the courtroom during

the period that Mr. Holloman was testifying, during the entire period?

A I have.

Q And you heard the statements that he made?

A I did.

Q There also is attached to the Bill of Complaint that has been filed in this case, Mr. Holloman's affidavit and also your affidavit?

A That's right.

Q And state whether or not, in general terms, whether or not numerous matters set forth in your affidavit are substantially similar to the matters contained in Mr. Holloman's affidavit?

A They are. We were together the whole time, and I concur with everything that Mr. Holloman said.

MR. BURCH: If Your Honor please, if Mr. Gianotti wants to do this, I am perfectly willing to stipulate that Chief MacDonald would stipulate in accordance with his affidavit, and that his affidavit may be accepted as his testimony.

MR. GIANOTTI: Thank you very much. I was trying to save time, Your Honor.

THE COURT: Yes, sir. Go ahead.

BY MR. GIANOTTI:

Q One or two matters that I would like to develop briefly, Chief. Based on this experience you have had, and with full knowledge of the facts that you stated you have had with reference to the occurrences which have happened here within the past weeks, state whether or not it is your opinion that the march such as has been described to you could be held in a peaceful manner, and under conditions that the safety of the people in the march and the people not in the march and the rights of all the citizens in this community could be protected?

A I do not hesitate to state that there could not be, in my opinion, any march of any description.

Q I don't believe I asked Mr. Holloman this question. State whether or not during the time you have been Chief, and also during your entire experience, have you witnessed many or few parades in the City of Memphis?

A We have had thousands of parades, marches.

Q State whether or not the City of Memphis is known as a place of many parades?

A I am sure from the time I can remember as a police officer they used to have one, we thought, about every day, because we were working overtime, and they would make you

come back on your overtime. So, I would say thousands of parades.

Q Now, Mr. Holloman touched in detail on events which occurred, consisting of the marchers in the streets. I don't know whether he testified to previous marches in the streets. Were there previous marches within the last ten or fifteen days outside of March 28th, other marches down Main Street?

A The Auditorium was the only one.

Q And during that time was there any harassment of these marchers by the Police Department trying to stop them, or did you try to regulate them?

A We tried to cooperate with them. In no way did we try to stop them.

Q On these picketing marches, as you recall, has there been any harassment by the Police Officers or anybody else against these people marching?

A Not to my knowledge.

Q One other matter, Chief MacDonald, on the date in question, that is the 28th of March, Mr. Holloman was asked certain things about Dr. Martin Luther King, and he didn't have the information. State whether or not, if you know, from information that you have, what, if anything,

the Police Department did toward protecting or not protecting Dr. Martin Luther King on March 28th. Give us some detail, if you know.

A It was the day of the parade, and at Main and Beale when they left the parade three motorcycle officers accompanied them to the Rivermont. They called me from the Rivermont --

MR. BURCH: If Your Honor please, I am not objecting to this, and it takes up a lot of time. As far as I know, there is no issue in this lawsuit about the Police Department failing to protect Dr. King. As far as I know, they did the very best they could under very difficult circumstances. We are not trying the Police Department.

MR. GIANOTTI: Thank you, Mr. Burch. What we are trying to say is there was need to protect Dr. King on a prior occasion, and that's evidence, we think, of what might happen in the future.

THE COURT: All right. Go ahead.

BY MR. GIANOTTI:

Q You may finish your statement.

A When they called me and told me they had taken them to the Rivermont, I told them to stay with him to see that

he was protected.

MR. GIANOTTI: You may cross-examine.

CROSS-EXAMINATION
BY MR. BURCH:

Q Chief MacDonald, you, like Mr. Holloman, have informed yourself as well as you could about the people that you were dealing with in these racial matters, haven't you?

A We have tried, yes, sir.

Q And you know how the power structure among the Negro community is fractured -- you know there are these various contending groups for power among the Negro community, don't you?

A That's right.

Q You know there are the Black Power advocates. You know there are those who advocate violence as the only solution, and you know there are the non-violent advocates, and you know even they are subdivided, don't you?

A That's our information, yes.

Q Has it come to your attention the article in Look of April 16th by Dr. Martin Luther King, which purports to set out fully in detail and at length his views on the subject of non-violence?

A I haven't seen it, no, sir.

Q Has it come to your notice that there has appeared in the public press, and I am reading from the New York Times of Monday, April 1st --

(Reading) "The Reverend Dr. Martin Luther King, Jr., says that if Negro rioting continues, 'we'll end up with a kind of right-wing takeover in the cities and a Facist development which will be terribly injurious to the whole nation. I am convinced that if the rioting continues,' Dr. King wrote in the current issue of Look Magazine, which goes on sale tomorrow, 'It will strengthen the right-wing of the country.'

"Dr. King said he did not believe that the United States could stand 'another summer of Detroit-like riots' without suffering consequences that threaten to 'destroy the soul of the nation and even the democratic possibilities of the nation.'

"The alternative to 'guerrilla warfare', Dr. King said, 'is militant non-violence' of the type he plans for Washington later this month. If the Washington protest demonstration

succeeds, he said, 'non-violence will once again be the dominant instrument for social change.'"

Do you know if that generally states the position of Dr. Martin Luther King, as you have come to understand it?

A Well, I will have to say this: To be honest with you, I don't know what his philosophy is, but I will say this for Memphis -- I have lived here all my life, was born and raised here, and we have been non-violent for years.

Q Well, this seems like a simple question -- but you are strong for non-violence, aren't you?

A I sure am.

Q And if it is a fact that Dr. Martin Luther King is for non-violence, you and he agree to the same thing?

A I will say this, and make this my answer -- I agree with non-violence.

Q And you agree with everybody else that wants non-violence?

A Well, I am for that.

Q Now, you have heard Director Holloman's testimony that if there is going to be a march and there is going to be

a march that takes place by substantial numbers of people in this community on next Monday, you would rather have Dr. Martin Luther King lead it than a great many other people whose name would occur to you, isn't that so?

THE WITNESS: Judge, I would like to say my version of it.

THE COURT: That is what he is asking.

THE WITNESS: I would say this: I don't think anyone can make a march next week without violence, whether it is this group or some other group and, of course, this is the same thing we get all the time -- is what is going to happen if we don't do so and so, but I am talking for the Police Department of the City of Memphis, and I don't think we are equipped to handle a march next week.

BY MR. BURCH:

Q It is very clear to me, and I assume it is very clear to everybody, that you and Mr. Holloman would be much happier if there was no march. I understand your position about that. But we can't always have what we would like. Now, if it is a fact that there is going to be a march, I

am going to ask you wouldn't you rather have Dr. Martin Luther King lead that march than a great many other people who might come in and replace him in his absence?

A If you could name a few of them, yes. But, on the other hand, we took that assumption last week with the idea that it was going to be peaceful because Reverend King was leading it, and we got misled, so I have to say this in all fairness -- I don't think anyone at this time could lead a march. Now, if I had my rathers, I could name a lot of people that I would rather have lead the march. I would rather local people lead the march.

Q Now, I read in the papers frequently that you expect to solve a crime and generally you do, and sometimes you don't.

A A lot of times we don't.

Q And it is possible for things that you are responsible for to get out of hand, and they do get out of hand?

A I agree with that.

Q And every one of the policemen is not an angel, and they sometimes do make mistakes, don't they?

A We all do, including lawyers.

Q That's right. And you will apply that possibility also to Dr. Martin Luther King, wouldn't you?

A I would apply that to everybody.

MR. BURCH: That is all.

THE COURT: Chief, let me ask you this question: As you visualize the alternatives being presented to the Court, is it pretty much this: That either on the one hand the Court is going to allow a march to go on without restrictions or a march to go on with restrictions. But, in either case you say that there is a great risk of violence as against, on the other hand, no march at all by virtue of the injunction of the Court, is that right?

THE WITNESS: That's right, yes, sir.

THE COURT: As you see it, the decision the Court has to make as to whether or not we will have any march at all or a march either with or without restrictions, that the Court actually realistically has that alternative?

THE WITNESS: Judge, if you go by the newspapers, and that's what we go by, and the fact that six thousand out-of-town people are going to be in here, I don't think we can control it.

THE COURT: That's not my question at all. I understand your position is that if we have a march

without any restrictions, or even if we have a march with restrictions as proposed in one of the defendants' pleadings, in either case, that violence is highly likely?

THE WITNESS: Right.

THE COURT: And there is nothing that you people can do to prevent it or Martin Luther King himself?

THE WITNESS: I agree with that.

THE COURT: On the other hand, you think if the Court's injunction stays in effect, we won't have anything?

THE WITNESS: I didn't say that, no, sir.

THE COURT: Well, what do you think the alternatives are that are presented to the Court? I asked Mr. Holloman when he was on the stand -- let's assume that the Court maintained this restraining order in effect: that Dr. King and his people would say, "All right. That's a Court order. We will obey it. We are packing up and going back to Atlanta." Then assume in spite of that fact, that under other leaders, a march took place. Now, you have already said that you would rather have Dr. King lead whatever

happens rather than some people you can think of.

THE WITNESS: That's right.

THE COURT: Let's assume that the Court maintained the order in effect and Dr. King and his people decided to violate the Court's order and take the consequences, which, of course, they could do -- that's possible. Do you think there would be more or less chance of violence if there was a march under those circumstances with the Court having the order in effect, but they violating the order, as against the situation where we had an order in effect in which we had conditions imposed upon it which the defendants have agreed to.

THE WITNESS: I can see your point, and, of course, I would say this -- if the Court allows any sort of march, we are going to need some help, because I don't believe these people from out-of-town or other people that are not local will worry about any sort of injunction. We are going to have some people hurt, and that's all I am interested in. As far as the march, we were assuming the other day that it was going to be peaceful, and we were hoping

that it would be, but it wasn't. But anything that happens from now on, I want the public to know that the Police Department is not able to handle it.

THE COURT: Of course, the Court wants you to know that the Court agrees with you and Mr. Holloman and with everybody who is for non-violence. But, in giving your opinions as to what the Court ought to do here, and I am referring now to you and Mr. Holloman together, I felt that you thought that the alternative being presented to the Court was either a march without restrictions or a march with these restrictions, offered by the defendants on the one hand, in which case you say there would be a great risk of violence in either case, as against nothing happening at all Monday, and if it is true that those are not the realistic alternatives, that we are likely, in view of the buildup that has been going on, likely to have something happen Monday in terms of a march, perhaps the alternatives are different from what you and Mr. Holloman are contemplating, and then it would require, perhaps, a little bit different judgment on the part of the Court as to which is the better alternative, wouldn't it?

THE WITNESS: I think so, yes, sir.

THE COURT: All right. That is all I have.

MR. GIANOTTI: May I make an observation,
if Your Honor please?

This is all very well, and I think I see the position of Mr. Holloman and Chief MacDonald and also the Court. But I think we could properly point out that this case, and I am not suggesting the answer that the Court is going to answer in his final determination, but on the assumptions that Mr. Burch has been making, it would appear, appear that the Court, based on Mr. Burch's statement, is assuming also that the Court does not have the power to enforce its own order. Assuming -- very respectfully -- I am trying to be, Your Honor, -- assuming the Court should find that the best interest of all citizens, Mr. King and everybody else, non-residents, and I am not saying the Court is going to do this -- I have no idea -- but I think that it is felicitious -- Mr. Burch's statement is felicitious in that it just disregards the thought that the Court has the right to enforce its orders and to protect, anticipatorily, a violation of that order.

THE COURT: Well, now, Mr. Gianotti, of course, we are not arguing the case at this point. The questions the Court addressed to Chief MacDonald a moment ago and addressed to Mr. Holloman earlier were in an effort to elicit from these gentlemen, as expert law enforcement people, what they thought about the alternative, if the alternatives were somewhat different from those that they had assumed.

Now, since you made that statement, I think the Court should say this: Of course, everyone who would be subject to the injunction presumably would be violating the injunction if they acted contrary to the injunction. But in that connection, we have some problems. No. 1; it would be entirely possible, as the Court sees it, that many people could march Monday without being in violation of this injunction, either on the theory that Dr. King and his people had disassociated themselves from it, and, therefore, these people would not be acting in concert with these defendants, or if Dr. King, perhaps, violated the injunction and continued to be associated with it, but these people were residents. Now, this complaint is filed on diversity of citizenship and

relies on diversity. Of course, to the extent that you are relying on diversity, certainly the injunction could not run against a resident. To the extent that you are relying on Federal questioned jurisdiction and to the extent you are relying on that, it could, against a resident. It could against a resident. But that would take us into the question to the extent that the city is right about the law here.

Now, in general, you have two basic propositions that you are offering to the Court. No. 1, this Court has general equity power to enjoin a march which is likely to result in loss of life and property and personal injury; that sort of thing. In addition to that, you are pitching it on certain Federal Civil Rights statutes in your Federal question proposition. But, it would certainly -- to the extent that you are seeking an injunction against residents, it would require a Court to get into the law still further as to whether or not you actually have a Federal question as claimed here.

MR. GIANOTTI: That's correct, Your Honor.

THE COURT: All right. Is there anything further from Chief MacDonald?

MR. GIANOTTI: No, sir.

MR. BURCH: Nothing further.

THE COURT: You are excused.

(WITNESS EXCUSED)

MR. GIANOTTI: Call Mr. Lux.

HENRY E. LUX

The said witness, having been first duly sworn,
testified as follows:

DIRECT EXAMINATION
BY MR. SIAMOTTI:

Q State your name, please.

A Henry E. Lux.

Q And your occupation?

A Assistant Chief of Police, City of Memphis.

Q How long have you been in your present position?

A Approximately seven years as Assistant Chief. My
complete service is twenty-three years.

Q And you have heard Chief MacDonald and Director Hollo-
man testify?

A I did.

Q And I don't want to go into a lot of repetition, but
state where you were, and leaving out all the matters
leading up to the 28th, that is between, say, the 15th
and the 20th, up to the 28th, because that has been covered.

MR. BURCH: If Your Honor please, I am willing
to make the same stipulation with reference to
Chief Lux. As far as I am concerned, it may be
stipulated that his testimony will be in accordance

with his affidavit and that the affidavit may be taken in lieu of his testimony.

MR. GIANOTTI: Thank you very much.

Q Now, I want to go into this briefly, Your Honor, because Chief Lux was on the scene and can give the Court a better description of what occurred.

Where were you on the morning of March 28th at or about the time, say, an hour or so prior to the time that this parade started from Clayborn Temple in this city?

A I was in the vicinity of Clayborn Temple on Hernando.

Q Do ahead and explain to His Honor what occurred.

A I was assigned there to walk at the head of the parade. When I arrived on the scene where they were assembling, my first contact was with Reverend Lawson, whom I asked at that time if they were going to stick to the parade route that I understood that they were, and he informed me at that time that they may make a change coming back in the parade route. There were numerous people. I asked for an estimate from the helicopter, and they estimated approximately five or six thousand people were gathered in the streets. They completely took both sides of the street and the sidewalks. There were numerous people carrying signs at this time on

sticks approximately one by two inches, three feet long. Some of them had stripped the signs off of these sticks and were wielding them in the air, and it was something on the order of mass confusion. Shortly thereafter Dr. King came west on Linden Street and was taken from his car and was literally dragged into the center of this parade. I am acquainted with Reverend Lawson, but I know other ministers by sight, and they were attempting to get these people to get off the sidewalk and line up at the end of the parade, but they had no luck in this. They moved the parade off at this point, and this was literally taking both sides of the street and the sidewalks as the parade moved.

There were some hundred and fifty news media people in front of this parade in wagons, afoot, all sorts of transportation. It was a real mess, and I don't know who was mingling among the people. We arrived at the intersection of Hernando and Beale, and we turned the corner to proceed west on Beale. Then a window was knocked out immediately to my left and, of course, I was marching at this time within twenty feet of Dr. King and Dr. Lawson, and we continued, and as we proceeded on down Beale Street windows were knocked out on both sides of us, all the way to the intersection of

Main Street. Of course, I was at the head of the parade, and glass was literally falling continuously during this walk from Hernando Street up to Main Street. There were ministers at the head of this parade that were doing everything that I could see that was within their power -- as a matter of fact, I got one of the police bull horns for Reverend Lawson, who was attempting to do what he could to stop this, without avail.

When we reached the intersection of Main and Beale, I, of course, was looking in all directions, because sticks were flying, frankly, and I had self-preservation in mind at the time, and when I turned back around, Reverend Lawson and Dr. King were no longer at the head of the parade. There were other ministers there who attempted, in vain, at this point to do what they could to try to stop this. But, of course, they were ignored. A group broke off the right-hand side of the parade, on the east side of Main Street, fifteen or twenty or twenty-five, and continued to break windows on up to Gayoso.

In the meantime I had been on the radio and called in reserve people, and we were able to stop the parade at this point.

Q What steps did you take, and how was this brought about?

A I brought in people, and it was necessary that we use gas. We broke gas both on North and South Main.

Q In your opinion, could you have avoided the use of gas under the circumstances then existing?

A Absolutely not. I was just hoping that this would stop it, because we were stretched real thin in numbers.

Q Now, what happened after that? Were you able to turn them back, and where did the marchers go from there?

A They went back east on Beale from that location. After the going was clear -- I looked down, and it was clear to Second Street, or substantially clear, and I went to Headquarters and received another assignment.

Q Now, I have the affidavits of yours and Mr. Holloman and Chief MacDonald testifying, quite in detail, as to what happened during the rest of the day and up until the early morning, is that correct?

A Yes, sir; and those things are true to the best of my knowledge.

Q And your testimony would be substantially the same?

A Yes.

Q Chief, based on your experience as a police officer and based on the occurrences that have already happened -- strike that for a moment.

One other question. Was there any real control of this assemblage at Clayborn Temple prior to the time of the march?

A No. It was never under control. Reverend Lawson, I say again particularly, and other people whom I assumed to be ministers, tried to line this thing up and move it off, but it was without avail.

Q Now, for the record and for the record only, because I know Judge Brown knows approximately how far it is, but how far is it from Clayborn Temple to Hernando and Beale?

A Approximately a block and a half.

Q Now, go back to my previous question -- give the Court your opinion, based on this occurrence of March 28th of the present atmosphere, -if there is an atmosphere, in Memphis at this time, without going into all the reasons that create the atmosphere, because that has previously been testified to, what is your opinion, and what would you offer to His Honor, based on your experience about the forthcoming parade on Monday of this coming week? Do you think we should have a parade, first, or if we should, under what circumstances and so forth?

A Personally, I do not think so, and, of course, you base an opinion on your past experiences to a great degree, and my past experience with the last parade left a lot to

be desired, as has already been testified here.

MR. DIANOTTI: You may cross-examine.

CROSS-EXAMINATION
BY MR. PURCH:

Q Thief Lux, in every community some violence is an inevitable part of the community living, isn't it?

A That's true.

Q And the fact that we have a Police Department is a monument to the fact that you are going to always have some violence in the community?

A That's correct.

Q And you know that wherever you have crowds of people that are excited and where there is emotional atmosphere, violence may break out?

A This is correct.

Q You have been to football games and you have seen some lovely fights about tearing down the goal posts, haven't you?

A Yes, sir.

Q And wherever there are large groups and meetings, particularly when there is spirited controversy going on or a matter being discussed about which people have strong views, fights can and do break out?

A That's correct.

Q And instead of trying to prevent such meetings and doing away with football games and meetings of that sort, you take preventative measures to try to minimize the risks?

A That's correct.

Q You don't like the drinking at large public gatherings, and to the best of your ability, you try to remove inflammatory things from the proceedings, don't you?

A That's correct, yes, sir.

Q Now, I want to ask your judgment about a few alternatives. I don't mean to suggest that these are the only alternatives available, but I want you to assume they are among the available alternatives. First, we will start out with leadership. I want you to assume that there is going to be a large march next Monday. Would you rather have that march led by Dr. Martin Luther King and Reverend Lawson, whom you have testified did what he could to quell the disturbance last time, or would you rather have some person who has a reputation for advocating violence lead that march?

A Let me preface my answer with this: I would prefer no march at this time.

Q I understand that. In every answer you have given me I understand that.

A Certainly I would prefer Dr. King.

Q Now, make a further assumption -- suppose this Court should enjoin Dr. King from participating in that march, and assume further, and this is a bare assumption, both on your part and on mine, suppose Dr. King would say as a matter of conscience, "I feel that I should participate in civil disobedience. Thoreau advocated it, and I am going to jail rather than obey the order.", and the march would then proceed not only with the original grievances that caused the march to originate, but the further grievance that Dr. Martin Luther King at that moment is in jail, do you think the probability of violence would be enhanced or diminished by Dr. King being in jail rather than leading the march?

A This is a real difficult question to answer. I think the violence is present at this moment, regardless of which way we go. It amounts to the same in my judgment.

Q Well, Chief, see if you will follow me, if I am right about this: On this hand you have a hypothetical march being led by Dr. Martin Luther King, Reverend Lawson and others who have their whole reputation and future effectiveness resting upon that march being non-violence. That's one hypothesis. On the other hand, you have Dr. Martin Luther King, and perhaps Reverend Lawson in jail and some now

unknown leader is leading these men with all the grievances that they now have, plus the further grievance of their leaders being taken away from them. Which one of the two hypotheses, in your professional opinion, is most likely to produce violence?

A Well, I think possibly the latter, but we are making some real assumptions here, because we haven't had any march of any size until Dr. King got to town.

Q They are really great assumptions, and I am receiving your answers, and I am sure the Court is on that basis.

For instance, as far as I am concerned, it is a violent assumption that Dr. Martin Luther King would attempt to violate such an injunction.

A Yes, sir.

Q Now, let's go on with our hypothesis. You have testified in a very lucid way what a difficult police problem it was for that march to be coming up Beale Street there as you have characterized it, a massive march, completely across the street, occupying the entire street and sidewalks. That's the way it was, wasn't it?

A Yes, sir.

Q And there was no way for the police to work between the marchers and the sidewalks. There was no way to keep

them from moving in and out of the march. It was just --
it was a mass, a moving mass?

A That's correct.

Q And that is that?

A Yes, sir.

Q Now, you have testified also that some of these
marchers had placards with sticks on them, and it was an
easy matter to detach those sticks from the placards, and
what had been a support became a weapon?

A That's right.

Q And that's a bad condition, isn't it?

A Yes, sir.

Q Now, if we are going to have a march, and this, again,
is an assumption, I am going to ask you to follow me and see if
what I am about to suggest would not greatly improve the
ability to police it, watch it, supervise it.

A Mr. Burch, I think I have read that. Is this the
proposal that you gave Mr. Gianotti? I think we might save
a little time if it is.

Q Well, I am not sure that the Court has read it, and
I want the Court to know your observation about each point
of it.

First, that instead of having this massive

march, we are going to have the marchers marching not more than four abreast in about the center of the street. Now, that would be an improvement?

A Yes, sir.

Q And that would leave abundant space on the sides so that the parade marshals and the police could march alongside the marchers? That would be a great improvement?

A If we are allowed to clear the sidewalks. I don't know if we could clear the sidewalks. Do we have power to tell people they can't stand and watch the parade?

Q Whether you clear the sidewalks or not, if you have four people abreast walking in an eighty-foot strip, you have plenty of space between them on the sidewalk?

A Yes.

Q Now, if we remove these sticks and not have any sticks in the parade?

A It would be a big help. I assume you.

Q That's what started breaking windows, and also heads.

Now, one of the things that was wrong before was there was no intimate, close communication between yourselves and the other police officers and the leaders of the march, was there?

A Well, between the leaders of the march and myself.

I had communication with the other officers by radio.

Q I am not suggesting there wasn't excellent communication between you and the other officials.

A Maybe I didn't understand you.

Q My point is that when the details of the march were first set up before, you didn't sit down with anybody, or nobody came to sit down with you and said, "Chief, this is what we intend to do. Give me your comments." You didn't have that, did you?

A No, we did not.

Q It would be better if you had that, wouldn't it?

A Certainly.

Q As a matter of fact, you had virtually no communication in advance of the march except through Reverend Lawson -- except between your pastor and Reverend Lawson and Mr. Caywood, who was an intermediary?

A That morning, yes, sir. I saw Mr. Caywood that morning.

Q So, if you get the communication, that would tend to help somewhat. Now, as far as you could tell, were there any trained marshals who were a part of the parade who attempted, as a part of their job, to keep the crowd within reasonable dimensions and to prevent acts of violence?

A There were people with tapes around their arms. They

locked their arms and did everything, but they couldn't control it.

Q After the violence started?

A Well, this was before when it started to move off, when they were trying to actually line it up to move it off.

Q Now, generally, if we are going to have a march, which, again, I know you would rather not have, that you are not endorsing by your testimony in any way -- if you are going to have a march, you would rather have it with Dr. Martin Luther King than by some other person, if he were in jail or absent, and you would rather have it with these conditions that are set out in the exhibit to the answer than without them?

A Yes, certainly.

MR. BURCH: I believe that is all, Your Honor.

MR. GIANOTTI: That is all, Your Honor, and that is our presentation.

THE COURT: All right, gentlemen. It is immaterial to the Court whether we adjourn now an hour for lunch and go into the defendants' proof or work on until 12:30 and take an hour from 12:30 to 1:30.

MR. BURCH: If Your Honor please, I think we will eventually save time if we would adjourn and take back up a little early. I told the Court I was going to have two witnesses. Actually, I am going to have three, one of whom I have not had any communication with yet. All of my witnesses will be brief. I will say that I should complete my proof within an hour at the outside.

THE COURT: Everybody agrees that an hour for lunch is enough, do you not? That is short-changing us a half hour from our usual lunch time.

All right. The Clerk will adjourn us, but when we do adjourn, we will adjourn until five minutes after one.

Mr. Clerk, adjourn us until five minutes after one.

(ADJOURNMENT)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CITY OF MEMPHIS,
A Municipal Corporation,
Complainant,

v.

NO. C-68-80

MARTIN LUTHER KING, JR.,
HOSEA WILLIAMS, REVEREND
JAMES BEVEL, REVEREND JAMES
ORANGE, RALPH D. ABERNATHY and
BERNARD LEE, all Non-Residents
of the State of Tennessee,
Defendants.

VOLUME II

Thursday, April 4th, 1968

I N D E XVol. II

<u>Witness</u>	<u>Direct</u>	<u>Gross</u>	<u>R/D</u>	<u>R/C</u>
James M. Lawson, Jr.	121	137	153	
Andrew Young	168	179	200	
John Spence	208			

Thursday, April 4th, 1968

The hearing in this matter was resumed on this date, Thursday, April 4, 1968, at 1:05 o'clock, p. m., when and where evidence was introduced and proceedings had as follows:

THE COURT: You may put on your first witness for the defendants.

MR. BURCH: Call Reverend Lawson.

JAMES M. LAWSON, JR.

The said witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. BURCH:

Q Would you state your full name for the record, please?

A James M. Lawson, Jr.

Q You are Reverend James M. Lawson?

A That's correct.

Q What is your right to that title?

A I am a pastor of the Centenary Methodist Church, and I am a duly ordained minister of the Methodist Church.

Q Where were you born?

A Uniontown, Pennsylvania.

Q What is your education?

A I grew up in Ohio, for the most part, where I did most of my elementary and high school work. I have a B. A. in Sociology from Baldwin-Wallace College at Berea, Ohio. I did my work in theology at Boston University, the Baldwin School Theology as well as Vanderbilt University.

Q Vanderbilt University in Nashville, Tennessee?

A Yes, sir.

Q Now, when were you ordained into the ministry?

A I was ordained a deacon in 1952 by Bishop Matthew W. Claire, Jr., and I was ordained an elder in 1960 by the same bishop.

Q And where has your active ministry been?

A Well, I have worked as a Methodist missionary in India where I was a coach and a minister to students in Nalco University. I have been a pastor of four parishes with the present parish at Centenary for six years being the longest. I have pastored also in Nashville, Tennessee.

Q Now, Reverend Lawson, have you been, for some time, involved in what, for lack of a better term, I will simply call the civil rights movement?

A Yes, sir.

Q What is your connection, and don't go into it in great

detail, but give me the significant activities in which you have been engaged in that movement.

A Well, there have been a great variety. I have been engaged as a person in terms of just insisting on equal rights and opportunity for myself and for others. I have been involved in the whole sit-in campaign that occurred in 1960. I was involved in some of the school desegregation crises in 1957, '58 and '59, and I have taught work shops on non-violence all across the country. I was involved in the Freedom Rides. I was involved in the movement in Nashville. I have been a consultant for the Southern Leadership Conference in the area of non-violence for some years. I was involved in the Birmingham campaign, the Mississippi Meredith march, to name just a few. -

Q Tell us, for the record, and rather succinctly, what is the viewpoint of the Negro involved in the civil rights movement as to the value and the efficacy of demonstrations? What is the theory of demonstration itself?

A Well, I think that essentially the idea is that people who are in America, as people elsewhere in the world, have to get a visible picture of the injustice or of the truth before they are willing to commit themselves to living by or changing it. So, a demonstration is essentially an effort

to visualize the picture for a community action, and to confront the community with the reality of what that visualization means.

Q Now, Reverend Lawson, for the most part, are Negroes poor?

A For the most part.

Q For the most part, do Negroes have access to the more conventional media? By that I mean newspaper advertisements, television spots and things of that sort?

A For the most part, no. In the City of Memphis, for example, the average family income for the white family ranges somewhere around sixty-three hundred dollars a year. For the average Negro family in Shelby County, it is about twenty-one hundred dollars per year. With that kind of gap, one discovers the great numbers of people who do not really know many of the possibilities for themselves or for their children or for others in the community.

Q You have heard the name of the Press Scimitar and the Commercial Appeal both mentioned in the proof this morning. State whether or not the ministers association, of which you are a member, would have the same access to the columns of that paper as, let us say, the Chamber of Commerce would?

A We would not.

Q Now, in addition to the value of being able to communicate by demonstrations, do demonstrations have, in your opinion, value in furnishing an outlet for emotions that exist and that would otherwise be pent up in the community, and, if so, elaborate?

A Yes, very definitely. You have to find -- when you have injustice, poverty and cruelty, you have got to give a great number of people a legitimate and a hopeful way of changing that. So, that demonstrations, mobilizing people and getting people to commit themselves to non-violent direct action gives them that hopeful means, and I think we have to say also that this has been the most effective way of social change in this half of the twentieth century in the United States.

Q And do you draw that conclusion from your own experience that you have testified, and from the writings and experiences of others?

A Very definitely.

Q Whether it is right or wrong, do you sincerely and conscientiously believe it?

A I know it. I believe it absolutely.

Q Now, Reverend Lawson, tell us, if you will, the origin

of the demonstration that ended so disastrously on the 25th of March.

A Well, the march on the 23th in a sense began with the whole development of, first, the strike on the part of the Public Works Department employees, the realization of the vast majority of the Negro community that these men had a right that we had to support, and then the whole development of demonstration as a consequence of that, of boycotts and demonstrations. As a part of the escalation of that, the local leadership had felt that we had to have large marches, because a large march is a way of bringing together thousands of people and giving them a sense of direction, a sense of hope, a sense of usefulness for redressing wrong. So, as a consequence of this, we began to invite in national leaders. We invited in Roy Wilkins --

Q Let me interrupt you there. I want to come back to that in a slightly different connection, the development of the chronology of it.

State whether or not these activities which you have described, and which culminated in the march and which involved the proposed march, state whether or not they were designed to obtain better wages and working conditions for men who were then involved in a labor dispute and on strike?

A They were indeed.

Q Now, take up the development of this, please, and tell us how, as you term it, you escalated this effort.

A Well, we have tried to escalate -- of course, we have the daily marches that have gone on. We have sought to escalate by having youth marches. We have tried to escalate it by having all day poster walks on Saturdays, and then we also decided to invite in national leaders to identify and help us mobilize the national community. So, in this connection, the first person we called was Roy Wilkins.

Q Who is he, and why did you call him?

A He is the National Director of the NAACP with his office in New York. We called him, because he is one of the recognizable men of this country who identifies with the whole effort to redress wrong.

Q Is he an opponent of violence as a national weapon?

A He is opposed to violence and has said so many times.

Q Who else did you call?

A Bid Rustin (phonetic).

Q Who is he?

A Executive Director of the A. Philip Randolph Institute in New York City, which is an institute that works in the

field of reconciliation in labor matters.

Q And what did those men do in the community when they were called in?

A They came and spoke to public meetings and then met with our Strategy Committee and others of our local leaders in order to help us analyze and understand our situation in order to give us support.

Q Are you a member of the Strategy Committee?

A Yes. I am Chairman of the Strategy Committee.

Q Go ahead. What happened?

A During this period we were inviting these men in, we also decided to invite Dr. King.

Q For the record, who is Dr. King?

A Martin Luther King is President of the Southern Christian Leadership Conference with headquarters in Atlanta, Georgia, and, of course, as far as I am concerned, the primary prophet in the United States and in my own judgment, at least, the major voice of hope for people in the world who want to see a much better world.

Q And what are the methods of accomplishing social change for which Dr. King is famous?

A Non-violence, soul force.
elaborate on that for us, please, if you will.

Q Now,

A Non-violence is the term that is most often used by the press, which most of us do not like, because it is very negative. The way we think of it is that if a man is a man, and he has courage and understanding of his neighbors, then he uses these with his neighbor and not hatred and violence, so that soul force is the weaponry of the spirit.

Q Are you, and to your knowledge, Dr. Martin Luther King, unconditionally committed to non-violence?

A Yes.

Q All right. What happened about the organization of the march in which violence did result? Did Dr. Martin Luther King have anything to do with the organization of that march?

A He did not.

Q Who did?

A The Strategy Committee, the local committee.

Q Of which you are a Chairman?

A Of which I am Chairman.

Q State what happened and how did Dr. Martin Luther King get involved with it?

A He came in on the 18th of March, as I recall, to speak to a mass meeting. That mass meeting was at Mason Temple Church of God in Christ, and there were probably some

fifteen thousand people in the temple probably many more outside. He was very impressed with the kind of thing we were trying to do, and we suggested to him in the process of that meeting that he ought to return and lead a large march as a part of the movement.

Q Had Dr. King, to your knowledge, led large marches in other communities?

A Many times, in many places.

Q In any of those marches, had there been any significant violence?

A Not that I know of.

Q Dr. King's representative, who has been in all of those marches, is here to testify in detail about all of them, is he not?

A Yes.

Q All right --

A May I just say that two or three years ago Dr. King led a march in Detroit, Michigan, of some two hundred and twenty-five thousand people, in which there were no incidents of violence.

Q What happened about the planning of the march here? Just state how it was planned and what Dr. King had to do with it. Let me let you know what I am driving at so you

can be responsive to it. I am trying to establish the responsibility or non-responsibility of Dr. Martin Luther King for what happened as an incidence of that march?

A Dr. King was not engaged or involved in the planning of that march. That planning took place almost nightly by the Strategy Committee, and not only the planning, but the execution of that planning. The only contact we had with Dr. King during those days was to keep the confirmation of the date open and to set with him the time of the beginning of the march, to be sure he could make it at that hour. But, other than that, all the matters of that march were the responsibility of the Strategy Committee and remained so, incidentally, for the march on Monday.

Q Were you in charge of the march in the sense of being the person of primary authority?

A Yes. I was the Chief Marshal of the march.

Q And were you at the head of the march?

A I was at the head of the march.

Q Will you state in your own words what happened with reference to the occurrence of violence, how it started and what was done, if anything, to cope with it?

A I cannot be really certain in terms of the route of the march itself. We had great difficulty getting the

march going, because we found that the corner of Hernando and Linden, the sidewalks and parts of the street already filled with spectators, stretching up to Beale, and then up Beale toward Main, so we couldn't get compressed in the narrow space that was available, the great size that the march had become, and we started out anyway with the thought that in previous experiences once the march gets started, and you can stretch it out, then the lines and the ranks will be all right, and you will have normal order.

On this occasion, however, it became very apparent as we moved up Beale that there were young fellows, for the most part, on the sidewalks who, at least I didn't think, had ever joined the march, but who were apparently bent on bursting windows. I did not hear this until about a half block from Main Street. When I heard it, I sent a Marshal in the direction of the sound and said to him, "See if you can get that group off that sidewalk." Then I heard other sounds of breaking windows, and it was somewhere in here that I asked Chief Lux for a bull horn. By the time I reached the corner of Main and Beale, he had given me that bull horn. I sought, at first, to clear the people away from the front of the march, and get them to stop and to let the march move ahead, and then go into the march. This,

of course, was of no avail, because by this time some of the youngsters on the street on the east were already moving ahead of the march. When I heard windows beginning to break on Main Street, my primary concern was that we could not permit Dr. King to stay on the street, so some of us turned and got with him, and we didn't stop for a conference. We insisted that he move up McCall and move out of the way, and I, with the bull horn, and the other ministers remained, and I took a few steps up McCall to make certain one of our local people would stay in charge as they took Dr. King and his party out of the area, and I returned to my bull horn to the front, and I said, "This is Reverend Lawson. I want you to turn around, and I want you to move back down the street the way we came slowly and with dignity."

The the front of the march stopped and turned around. I proceeded to move down the entire march with that bull horn, saying essentially the same thing again and again, and the march turned around entirely. When I reached the corner of Beale and Hernando, I stayed in the middle of that intersection with that bull horn. At first I tried to stop some of the fellows on the side who were bursting windows who had run down at that back part, I

suppose, but then I decided it was my responsibility to tend to those people in the street who were returning in a calm, orderly fashion. So I remained there essentially until the march, the people in the middle of the street, had almost all returned to that spot.

Q Did you do anything to ferment or cause violence?

A Of course not.

Q Did Dr. King do anything to ferment or cause violence?

A He did not.

Q As soon as violence occurred, did Dr. King, with the assistance and advice of those who were in charge of the march, leave the march?

A He did.

Q Did you do everything you could do to prevent violence?

A I did. May I say that not only did I return with the marchers to the church, but then moved around the church -- incidents of violence had begun then two and a half blocks west of the church, and I moved in that area, trying to get people to go on home and trying to get fellows that I saw bursting windows to stop and move away and disperse.

Q Is it, or not, your opinion that to a large degree the international reputation of Dr. Martin Luther King depends upon his past successfully practicing of non-violence?

A I am sure of it.

Q Do you believe that he has a sincere and devout interest in preventing violence if there is a march here on next Monday?

A I am sure of it. But, may I say this in a positive way: That it is Dr. King's desire, as it is mine, that Memphis and people everywhere learn to put into application the high ideals that most of us confess concerning neighborliness, love, justice, understanding, and not just, you know, on Monday, but every day of the week.

Q Now, Reverend Lawson, what, in your opinion, will occur in the community if Dr. King is either imprisoned or if he voluntarily absents himself from the march by reason of an order of Court?

A Well, I think we need to come to know that the City of Memphis is on trial as well as our country; that there are great forces within our country, many of which are rooted in our own character and history, that are demanding loyalty. For example, many people of my own generation have lived in nothing but war. We don't know any other kind of life except wartime life, and this teaches us at least the efficacy of violence, and so you find strong forces and voices now who call out for violence as the only

way of changing cruelty. Now, if we don't have alternative ways, if we don't show people that you can redress wrong in peaceful, active, vigorous, dynamic ways, that none the less are not violent, then you leave the gate open entirely to those forces that would prevail in other directions anyway.

Q And what do you think will happen if established non-violent leaders are not permitted to lead the march that is scheduled for next Monday? What might, or could, happen?

A There will be continued pushing against cruelty and injustice, and this can take any kind of form, including the violent forms. But, if those of us who consider ourselves responsible and who are actually concerned that people learn a better way, advocate our responsibility, then we needn't be surprised if other elements will proceed to take over. In other words, I think we ought to look at the fact that across the country in almost every city where there have been major riots, there have not been powerful and dynamic non-violent movements.

Q In your expert opinion, do you believe that the possibilities of violence in this community will be enhanced or diminished by allowing the march scheduled for Monday to proceed under the leadership of Dr. Martin Luther King with reasonable restrictions, which you are ready to accept

for the better conduct of policing the march?

A I believe the chances of violence will be diminished.

Q One final question -- are you a member of the Memphis Ministerial Association that has become an intervenor in this cause?

A I am.

MR. BURCH: I have no further questions,
Your Honor.

CROSS-EXAMINATION
BY MR. CRAVES:

Q Reverend Lawson, the last question that Mr. Burch brought up, and when he was questioning, I believe you were in court this morning and heard Mr. Holloman and Chief MacDonald and Chief Lux testify, is that right?

A I did.

Q And the question he brought up about the march with restrictions -- now, let me ask you a little more about that. I notice very much in your testimony about the march you emphasize youngsters in this. Would a restriction on any march that, say, no one under eighteen be permitted, would that be a reasonable and a valid restriction and tend to have a chance of less violence?

A It would be a very unfortunate restriction for the young people of our country, and I think we have to try to do -- let me speak to it relatively -- the reason I say of our country, is because I have the feeling as a pastor and as a very close observer of the social scene that we have a tendency to try to pretend that Memphis is not a part of America, which it seems to me is very unfortunate in terms of many of the forces that are operating in our land. The young people of our nation and of the City of Memphis, as we well know, are very restive today, about themselves and about our society. Rightly or wrongly this is a matter of fact. Many young people who are Negroes feel very strongly that people like myself have been too slow in bringing about changes in our society, and that the normal ways of opening up equal opportunity, better education, housing and all have been totally inadequate. They have been taught by the society to think in terms of violence and hate. Now, they have a persistent pressure. They want to do something. It is important that responsible leadership help them to discover creative ways of doing something. Young people in this city will march. They will do something regardless of my suggestions or not. If you restrict them from being in non-violent marches and from

being open to our admonitions and our teaching, then you leave them entirely to go at their own wills or to go to other forces in our day.

Q Now, Reverend Lawson, to get back to my question -- I want you to assume this: That we have a march that is non-violent, or else we have no march, and the people will obey the law and will not have any violent actions or reactions. Now, is it better to have a march where there is a possibility of violence, or to have no march and people obeying the law and having no other violence? Now, just which of the two?

A I would not accept either of them, and the point I would make again is, that if you restrict a march to people only over eighteen, you are still going --- all you are going to do then is to build up the frustration itself of the young people. Now, may I also say another word about this?

Q Let me ask you this question, and then you can respond to it. You are scheduling this march on a school day. Are you urging parents to have their children disobey the law, or urging the parents to disobey the law by sending their children to march and stay out of school in violation of truancy laws? Are you urging them to do that?

A We are not.

Q Now, if you don't have the children out of school, and

we assume that it is close to seventeen or eighteen before you graduate from high school, and I assume that in trying to raise economic levels and equal justice and opportunity, that you are in favor of education and people taking as much advantage of their opportunities as possible, and the Court could very well restrict any march to persons over eighteen, and if you take them out of school, you are taking them away from their education --

A (Interposing) Let me respond, if I can, in two ways. No. 1, such a restriction, as I have said before, would only increase the frustration that you have in your high school students now. It would only further leave them open to those elements that are trying to teach them that non-violence and the idea of a non-violent march is a lot of nonsense. Secondly, I think you have to recognize that this whole problem has to be seen within the context of the question of the grievances of the Negroes. One of those grievances is at the point of the fact that many of us believe that our schools are not equipping our young people to live in the twentieth century. Now, all I want to say about this is an illustration -- that I find, as a pastor, the number of young people who come to me and talk, that, again and again the school curriculum has not enabled them

to find a meaningful life and meaningful nation and world that counterposes the obvious forces that they see operating in an urban situation and in our world. In other words, what I am saying is you have to see the educational situation from the point of view of the community that also knows that we are dealing with the question of races, and around the question of the redress of the rights of the Public Works Department employees.

Q Now, also, in discussing this matter of a march, have you, yourself, gone to the schools to encourage students to stay out, attend the march, or anything like that?

A I did for March 28th and, of course, this was not simply urging them to stay out. I said instead, "You are a member of this community. You have a responsibility not to listen to propaganda, but to participate in a meaningful way to help change injustice."

Q Now, also, in connection with the march, or proposed march, wouldn't it be of lesser nature to have any violence to have a mass meeting point, a small designated number of marchers set out, go around the route, come back to the large mass meeting point and then have speeches at the mass meeting where there could be fifteen, twenty thousand people available? Wouldn't that be a chance of less violence?

A It would not. Who would select the small group? How would you encourage great numbers of people to lend their energies in creative ways rather than destructive ways?

Q I notice you are also saying there should be no limitation on the number. Have you, as organizer, or helping to organize any proposed march -- do you have any idea how many you will have at all?

A You cannot have, because when you send out an invitation, you have to expect that you cannot know who is going to respond to it. In our planning we have tried to begin with the figure of five thousand, ten thousand, fifteen thousand, twenty thousand. In our planning for the march on the 22nd, rather on Monday, as an illustration, we have already started thinking in terms of some six hundred marshals. Now, this would give us every contingency, so that we could have either one for every five thousand or twenty thousand people. In other words, what I am saying is that you can't make a guess. On March 28th we said that we needed to think in terms of a minimum of ten thousand people and we have tried to plan around that number.

Q But you get down to the assumption that you have no

idea how many you would have at all?

A Only a guess.

Q Who have you sent invitations to, outside of the Memphis community?

A We have sent invitations to labor leaders and organizations.

Q Which ones? I would like to know who you have sent invitations to and who you have heard from and how many they say.

A I can't say specifically which ones. They have been sent to a number of city labor councils that represent, for the most part, all the Unions in a place like New York, Detroit, Washington, D. C. -- I know those for certain. Also invitations have been sent to a great number of churches in the Methodist-Church, the Presbyterian, the Roman Catholic Church, the National Council of Churches.

Q I gather you have had no response right now that you could report as to how many any of those have said they were going to send or come to Memphis?

A No. We have no idea. We only have been told that they will send representatives -- they will come.

Q Now, your whole basis of this march has been in support of the grievances of sanitation workers?

A That's correct.

Q And your case stands or falls on whether or not the sanitation workers then have a right to demonstrate?

MR. BURCH: I don't believe I understood that question.

THE WITNESS: I am not sure I did either.

BY MR. GRAVES:

Q Your whole right to march, the basis that you have to march, is whether or not the sanitation workers legally have a right to march or demonstrate?

A No.

Q But, you are basing your march on any grievances the sanitation workers have?

A The development of this Memphis movement is because of thirteen hundred men walking off the jobs asking for recognition, asking for decent treatment on the part of the city. The whole development has mobilized around that, but, very obviously, however, and I think this is something that a great number of people have not understood -- we see this as essentially a civil rights question, a racial question, and so the entire movement, while its nub is what is going to happen to these men, you see its context is urban Memphis.

Q Now, also, getting back to this, I believe you said, in justification of this, economic-wise, that the average Negro wages here or income was around twenty-one hundred dollars?

A Average family income.

Q And I think you are well aware, from your statements in here, that even before any proposed strike that the sanitation workers were earning a dollar eighty an hour?

A Some of them.

Q It is a dollar seventy-five or eight for all of them, isn't it?

A No, it is not. Some of them receive a dollar sixty-five an hour -- some receive less. I mean from their testimony to me, now, not to others.

Q Well, assuming that a dollar eighty is pretty close to the wage, and they work forty hours a week, four ten-hour days, that's about thirty-seven hundred dollars a year that sanitation workers are earning?

A Right; which made them eligible for food stamps and welfare programs if they had a family of four.

Q It is considerably higher than any twenty-one hundred dollars that the average Negro family income is?

A I am only stating the poverty figures that came out of

the Memphis State University with Dr. Stewart's studies of about three years ago.

Q Now, also, in your proposed march, are you telling the Court that unless there is a march that there will be violence, and people will disobey the laws, have looting, fires, Molotov cocktails, et cetera?

A No, I am saying something quite different from that. I am saying that the best defense against urban explosion in the midst of urban injustice is to have creative, vital, non-violent movements, which include marches, because, when this helps the angers and the frustrations and the fears of people to find legitimate expression and a means of changing their wrongs.

Q Now, also, to get back to the proposed march, have you attended meetings with Dr. King where he is speaking in Memphis, including last night, and others?

A Yes.

Q Has there been any mention in escalating things and, if so, what is meant by that term?

A Escalation means trying to expand the way in which we try to get the community to understand what the issues are about. For example, a major escalation that our Strategy Committee adopted this week was the fact that we are asking

the Negro ministers to go to their pulpits on Sunday and ask their people to no longer buy Coca-Cola or buy Wonder Bread or Taystee Bread or Sealtest Milk, with the understanding that the total community public involved is somehow helping Memphis to become a more just city.

Q Is there any reason to pick on these particular parties to ask the people not to buy?

A Simply that they are businesses and major businesses that need to help get sanity to return to our city, that they must engage themselves in helping to change wrong, they have the power to do so.

Q And you are hoping their sales will slack off to such an extent that they will want anything corrected that has to be corrected?

A We hope they will then engage themselves in the whole struggle for change.

Q Have they discriminated against anybody so their civil rights should be reported to the Justice Department?

A Yes. Certainly, if you go out to Wonder, Hart's Bread, you will discover that even though Negroes in the town, from a survey years ago, eat sixty-seven percent of the white bread, and you won't discover Negroes in any managerial, clerical or other categories like that in those plants, and

you will discover that they make up a small percentage of the total employment in that industry.

Q How many people have applied for managerial capacity with somebody like Coca-Cola that you know of?

A I know that many have.

MR. BURCH: If Mr. Graves wants to pursue this, if Your Honor please, I am not going to object, but I fail to see the relevancy, or what it has to do with what we are talking about.

MR. GRAVES: All right. I will move on.

THE COURT: Mr. Graves says he is going to move on. Go ahead.

BY MR. GRAVES:

Q Now, Reverend Lawson, on the 28th, seeing the conditions there at Clayborn Temple, why did you, as the Chief Marshal, ever give the order to move out?

A Because it was the considered feeling of a number of the persons in the Strategy Committee, and who were also Marshals, although Deputy Marshals, that once the parade began to stretch out, then the people on the sidewalks would fall back, and that we would be able to maintain its order.

Q So, I assume by saying "would be able to maintain its order" -- that you weren't in control of its order when it

started?

A The march itself, the people in the street were in very excellent order. Now, I think an illustration of that fact is that when I got out there with that bull horn at the front of the march and proceeded to tell the folks in the street to turn around and move back calmly, that, almost without exception, they did so.

Q But you couldn't control the ones who were throwing the sticks and breaking the glasses?

A That is correct. Many of whom I would like to suggest were on Main Street when we got there and most of whom did not actually ever join the march by getting into the street and indicating that they were abiding by our discipline.

Q Now, also, in your proposed plan of march, I want you to assume that on the date that you have selected for the march at Mason Temple, twenty or twenty-five thousand people meet. You cannot get them off the sidewalks. You cannot get them lined up. You are hoping that they will stretch out. You are hoping that they will get in line four abreast by the time they move out. Are you still going to tell them to move off just as you did on the 28th?

A Let me say that one of the things that we did not foresee was that a number of our Marshals would be very

inexperienced, and that we had not stressed sufficiently enough for them the fact that they would have to be fairly tough in order to see to it that at least in front of the church and all the sidewalk would be cleared. What we will do instead of that is to see to it that Marshals are stationed at certain points early enough around the site of the beginning of the march in such a fashion so that no person will be able to move into that area except as they are planning to be a part of the march and then move into the street and form a rank.

In other words, what I am saying is that we intend to see to it that our Marshals are well trained, and we started planning the schools for them last night, and we also intend to see to it that they will be tough enough to see to it that everyone who comes in our area and intends to join the march will be in a suitable place where they can be seen.

Q Now, you have a fairly long distance to march. About how far would you estimate it is from down on Hernando and Pontotoc to Main and Poplar, a mile or more?

A I wouldn't even guess, because I am not good at distances.

Q How many state or local law enforcement officials do

you want strung out over the line of the march or walking with the march?

A. I am not sure about this, but I think this is some place where the Police Department and we could cooperate on how many would be crucial.

Q. Do you propose there would be one with each line of four abreast or one with each group, and then all down along the intersections to control traffic?

A. No. I would not propose that many officers at all. I think that with cooperation and the Marshals doing our work that essentially the march itself will be well contained. If the 26th is an example of how the people in the street were able to respond, I think we can have it very well contained, and I think, therefore, that the police could deal with being on the sidewalk or with seeing to it that perhaps some of the same elements that moved before do not move into the area, and, may I say one other word about this -- I really do not like the assumption that it is only the young people who responded in violence on the 28th, because I saw a number of folks who were not. I think most of us in the Strategy Committee would say that the young people were a small minority; that most of the others who participated in many respects were people who were not

teen-agers.

Q Now, do you also propose that the police seal off the area and examine anybody that wants to come in, to be sure they are not part of any distant group that wanted to support violence or wanted to heckle the marchers or don't you want the marchers to be seen?

A Well, I don't have an answer to this question as such. I think this -- and very obviously the people felt this way about the first two efforts to seal off the area -- I believe if some of the groups that were on Main Street were under surveillance, and very likely they ought to plan to be able to deal with them and not want us to. But, as to sealing off the entire area, this, I think, I cannot speak to.

Q Now, again, you don't feel -- well, don't you believe there would be less chance of violence on any proposed march if there were a mass meeting, a march, and then a mass meeting with speeches and the marchers being somewhat limited in number?

A I do not think so.

Q But, don't you believe it would be better while Dr. King and others of his Southern Christian Leadership Conference led the march, that the marchers ought to be confined to local people protesting, rather than to import

them to protest?

A I do not think so.

Q Well, shouldn't these imported people protest in their own area for support of Memphis, rather than here?

A Well, I think they do. We know, for example, relief funds for these workers that come in indicate that they are giving their support in a variety of ways. But let me suggest to you that having them to come in and join with us is an important fact in the whole non-violent effort to show America how you bring about just change.

MR. GRAVES: That is all, may it please the Court.

MR. BURCH: Just a few questions, Reverend Lawson.

REDIRECT EXAMINATION
BY MR. BURCH:

Q Regardless of the cause, and regardless of whether it is right or wrong, will there be many youths who are out of school on the Monday of this march?

A I can't answer to the term "many". I do know, though, that when you have a march or a movement today in a place like Memphis, the young people want to participate, and they will participate with or without any effort from a person

like myself.

Q These young people, and particularly those who feel that violence is a solution, where would you rather have them on the day of the march, assuming they are not going to be in school?

A I hope we could get to them and talk to them and get them to accept the minimum discipline of the march itself.

Q Would you rather have them subject to the discipline and control of the march, or would you rather have them on the sidewalk?

A I would rather have them in the march with their commitment to it.

Q Now, you were asked a good many questions about the desirability of small versus large march. First, let us see what is a large march. Have you ever heard of a march that had a hundred and twenty-five thousand people in it?

A Yes.

Q Did it go off peacefully?

A Yes.

Q Now, is a large march likely to be more or less peaceful than a small march?

A I would say it is likely to be more peaceful.

Q Why do you say that a large march is likely to be more

peaceful than a small march?

A Because, No. 1 -- let's say that in the City of Memphis you have, let's say, two hundred so-called militants who want to urge violence. If they come into a march of three thousand, then you do not have as strong a march discipline that can dissipate their energies. On the other hand, if you have a march of twenty thousand with firm discipline and all, that entire group spirit, the esprit de corps of the group will help to contain the frustrations and the inclinations of that number of militants.

Q State whether the more volatile elements of the community are the first ones to respond to an invitation to a march?

A Many of them are. And may I just say at the same time that in all my experience in this whole struggle, stretching back to 1957 in the south, that, again and again, we have been able to sit down with the most angry and volatile persons and get them to accept the reality of a non-violent way of dealing with change.

Q So, in the first two or three thousand, you are likely to get the people who are emotional and glandular and have strong responses?

A Yes. And then as you get on up in the larger numbers,

you get the mammas and the pappas and the merchants and the lawyers and the preachers?

A That's right.

MR. GIANOTTI: May it please the Court, I was just about to ask to cross-examine Mr. Burch, but I stopped.

MR. BURCH: I didn't know we had the rules about leading. But if he wants to cross-examine me, I am ready.

THE COURT: Well, Mr. Gianotti, I believe in this case there has been leading and hearsay on both sides.

MR. GIANOTTI: But, if Your Honor please, I have not tried to get on the witness stand like Mr. Burch.

THE COURT: Go ahead, Mr. Burch.

BY MR. BURCH:

Q Reverend Lawson, I believe you testified that in connection with the march, which was held on March 28th, you did encourage school children to skip school that day and participate in the march?

A Yes, sir. But, let me say something else -- not to skip school, but to work it out with their parents, and,

in fact, not only was this the case, but we had a Strategy Committee conference with Superintendent of Schools, Stimbert, to talk with him about our concern here.

Q Well, in any event, whether they did it with or without their parents' consent, it would amount to skipping school without a legally accepted excuse to the school, wouldn't it?

A As I understood Mr. Stimbert's comment, there was normal process. If a parent wanted a child out of school for a designated function, it was up to the principal with a note from the parent whether that would be an excused or unexcused absence, and they were allowed a certain number of unexcused absences. Incidentally, we made it a very real point to say to young people, "If you are already in trouble with your school, if you are not doing as well as you ought to be doing, if you have already been playing hockey, then don't you march. You get to school." And, in fact, in my own neighborhood I happened to know some fellows, whom I know are in trouble with their schools, because they are not giving it due attention, and in the presence of witnesses I said, "Even on the day of the march you go to school."

Q I notice you also testified, Reverend Lawson, that while you had, to the extent that you have just stated,

encouraged some school children to participate in the march on March 28th, that you were not doing it this time?

A Yes. We have not done it.

Q Is that because of a re-appraisal of the situation and the wisdom of it?

A Well, I am not sure why it hasn't come up in this Strategy Committee, frankly. It hasn't come up. I have to say this -- that I haven't even heard it talked about -- now, it may very well be that a part of the assumption is what a part of my assumption is, and that is with the march a large number of young people will come with their parents anyway, because on the 28th we had -- well, it is difficult to say -- but we had people from all walks of life in this community marching. We even had presidents of the biggest Negro insurance companies in the city marching with their families, and some did like my wife and I did with our son, they wrote a note to the school the next morning saying where the child was and why.

THE COURT: Well, as I understood your testimony a while ago with respect to the school children, that it is your general theory that these young people are quite concerned with the issues which you are concerned with.

THE WITNESS: Yes, sir.

THE COURT: And that you think it desirable that they participate because that siphons off their feelings in a legitimate direction?

THE WITNESS: We do.

THE COURT: And the Court can understand what you are saying there, but I can't quite understand why, if that is your general theory, you would encourage them to leave school on that day. It would seem to the Court -- offhand at least -- that if the school child was a person who had these pent-up emotions, that it wouldn't take any encouragement to get him to leave, and what you might be doing in encouraging them to leave school is increase the incidents in proportion of very young people which wouldn't be otherwise true -- might not that be right?

THE WITNESS: I am not sure I have the full weight of that question at all.

THE COURT: Maybe I didn't put it very well, but what I am trying to say is this, and I will try to make it clearer. As I understand, it is your general theory that many of the young people are quite wrought up inside about the problems

and issues that you say you are concerned with, and you think they should participate in these marches, because it gives them a legitimate outlet for this feeling that they have?

THE WITNESS: Yes.

THE COURT: But, if a child has that feeling, he would be inclined to participate in the march anyway, would he not, without encouragement?

THE WITNESS: Right. He would be.

THE COURT: So, if you go encouraging children to do it, not to go to school and come join the march, might not you be encouraging children who are not particularly wrought up about the social evils that you have described, but are simply out on a lark, and it is a good excuse to leave school and participate in a little excitement? Isn't that possible?

THE WITNESS: Yes, sir. I assure you that's possible.

THE COURT: And, let me ask you one other question: It is generally true, is it not, that teen-agers are more excitable and more impetuous as a general proposition than older people?

THE WITNESS: It's also true that teen-agers

tend to be more idealistic than older people, and it is also true that you have to try to somehow give them some resources that will help to feed that idealism in the right direction, and may I say that one of my concerns as a pastor and citizen of this community and this country is this -- that I see great evidence in our society that we are leaving our young people wide open to meaninglessness, to not being able to appropriate the many forces going on in our world from technology to communism and somehow wrestle out of it a way of thought and understanding that will mean that we have health in our land and our world, and I am deeply concerned about this, and I see great evidence of it, and I also see that there is no -- that in the schools today there is not a bridge to somehow counteract all they see and hear, TV and radio and publications and in urban technologies and all. So, that here once again, I feel that as a pastor, what I try to help them understand that they must learn to live by the ways of love and truth and justice, that I am giving them some very concrete guidelines by which they can move through these very difficult and transitional days

through which we are going. Now, I say also, with all earnestness, that if some of us do not do this, and do it much more so than what we have ever done so in the past, then I am really worried about urban America and about our nation.

THE COURT: Reverend Lawson, however idealistic young people may be, you would also agree that they tend to be more impetuous than older people? Isn't that a part of growing up, that then you are less impetuous?

THE WITNESS: Yes, sir.

THE COURT: So, to that extent, you will agree, to the extent that you have a high percentages of these teen-agers in your march, it does create a special problem? You will agree with that, won't you?

THE WITNESS: Not absolutely in this sense, Your Honor -- that I have also found that some of our very best supporters in the movement are young people. They will do as we ask them to do. They will follow the non-violent discipline, and those who have been identified with the marches from the beginning have not participated in any of the violence or the looting that has gone on in this city, in this riot that we had

over the weekend over the 28th. Now, my own experience with young people is that they are a wonderful generation with whom to work, provided, on the one hand, you don't play the phoney with them, but on the other hand, you really try to challenge them in meaningful ways, both about themselves and about the world. If they think you are a phoney and that you are playing "Mickey Mouse" with them, they will dismiss you in a moment's notice. But, at least in the movement thus far in the City of Memphis, we have had a very wonderful experience with the many young people.

Some of these young people have been presidents of their classes, presidents of their student body, have won scholarships to the major colleges of this country and are out marching every day, right now.

THE COURT: Well, as I understand it, you haven't done anything particularly with respect to them vis-a-vis Monday, perhaps because you just hadn't thought about it. Now, going back to March 28th, as I understand it, your position on that was at least two-fold -- No. 1, that they should not be asked to be excused unless they were in good standing

in their schools, and, No. 2, they should, in a formal way, and with a note from their parents, ask to be excused, is that right?

THE WITNESS: What we did was to suggest to the parents, as well as the young people, that they follow the legitimate channels of the school structure.

THE COURT: Which is what, again?

THE WITNESS: Which is that if I, as a parent, decide that my son should go with my wife and I to a concert tomorrow morning, he would go with us. The next day we would send a note to his teacher saying why we kept him out of school. Now, if tests were given that day, then he would get an unexcused absence and would not have the chance to make up that test. But, otherwise, he would simply be given an unexcused absence or excused absence according to the wishes of the teacher and principal.

THE COURT: In any event, it is your position and your group's position that they should not be absent from school unless they are in good standing, and, further, that they have permission of their parents?

THE WITNESS: This is correct.

THE COURT: And what would you say about some sort of requirement that any of the school children who participate would have to participate with their parents? So, in addition to your marshals, you have a father or mother there?

THE WITNESS: I am not sure how we would enforce it.

THE COURT: Well, you could certainly try, couldn't you?

THE WITNESS: After all, we also recognize there is a limit to what you can do in that regard.

THE COURT: But, to the extent that you can recognize leadership, I wonder if you could not recognize it in that direction?

THE WITNESS: I think it is possible we could try. But, my only concern would be how we would be able to completely enforce this.

THE COURT: Now, the other thing I want to talk to you about -- I notice in the proposed restrictions attached to one of the pleadings of the file of the defendants, there is no mention of these signs with sticks attached to them --

MR. BURCH: I am sorry. I did not hear that, Your Honor.

THE COURT: There is nothing stated, I don't believe, about the sticks attached to the signs.

MR. BURCH: No, sir. It was not in there, but it can be put in there.

THE WITNESS: There will be no sticks in any march or any other potential weapons or weapon, and may I say about that, that when we saw in the process of the march some people pulling the signs off the sticks, the Marshals gathered whole arm loads of those sticks and carried them into the church and out of the march, and when we saw also some young people carrying them in the march, we asked them to drop them in the gutter. I did this on several instances. I saw them on Hernando, and I said, "Put that stick down now, right there." So we have already made that decision -- that that was a major error to even add such signs.

THE COURT: Now, Reverend, of course, you have developed considerable recognition in this community as a non-violent leader, and you have testified here that in your opinion a march could be carried out Monday

under the proposed restrictions and with complete cooperation between the police authorities and your people. That's your opinion, that that can be done?

THE WITNESS: Yes, sir, I believe that can be done.

THE COURT: And you are willing to stake your reputation as a non-violent leader that if such restrictions are imposed, and that if the police do cooperate with you and you with them, and absent any interference with outsiders, and I mean by that people who are trying to break up the march, that you are willing to stake your reputation that it will be a peaceful march, is that right?

THE WITNESS: Yes, sir, I am.

THE COURT: All right. Is there anything further?

MR. BURCH: I have nothing further.

MR. GRAVES: Nothing further.

THE COURT: All right. Step down.

(WITNESS EXCUSED)

THE COURT: Call your next witness.

MR. BURCH: Call Mr. Young.

ANDREW YOUNG

The said witness, having been first duly sworn,
testified as follows:

DIRECT EXAMINATION
BY MR. BURCH:

Q State your full name, please.

A Andrew Young.

Q Mr. Young, where do you live?

A I live in Atlanta, Georgia.

Q And where were you born?

A New Orleans, Louisiana.

Q What is your present occupation or profession?

A I am Executive Vice President of the Southern Christian
Leadership Conference.

Q And what is the Southern Christian Leadership Con-
ference?

A The Southern Christian Leadership Conference is an
organization about ten years old that was formed by one
hundred ministers across the south and in attempt, originally,
to bring about an end to racial segregation in the south.

Q Who is the head of that organization?

A Dr. Martin Luther King.

Q What has been your qualification to hold your present

position by way of education and experience?

A I went to Howard University and received seminary training in Hartford Theological Seminary. I pastored in the United Church of Christ in local congregations in Atlanta and Thomasville, Georgia.

Q You are an ordained minister of that congregation?

A Yes. And I served for a period of four years before coming to them as an Associate Director of the Department of Youth Work in the National Council of Churches.

Q And the National Council of Churches is like the name implies, a national association of churches, is it not?

A Yes.

Q Now, have you had anything to do with the so-called civil rights movement?

A Yes, sir, I guess so.

Q Just tell us what you have had to do with it. Tell us what your connection has been.

A Well, I joined the Southern Christian Leadership Conference in 1961, and I guess I have been just about everywhere and involved in just about everything that has gone on in civil rights movements since 1961.

Q Have you been in any marches?

A Yes, I have.

Q Have you organized any marches?

A Yes, I have.

Q Give us the names and places of some of the marches in which you have participated and organized.

A Well, I guess Birmingham, Alabama, Savannah, Georgia, Danville, Virginia, St. Augustine, Florida, Selma, Alabama, the Selma to Montgomery march, the Meredith march through Mississippi, the march on Washington, a series of open housing marches in Chicago, and various marches against the war in Viet Nam in New York and Chicago and also Atlanta.

Q What is the theory behind the march? What is its justification, as you see it?

A Well, I think the First Amendment of our Constitution gives us the right to make public protests, to seek a redress of any grievances that any citizen has against any segment of society, and it has been our philosophy that we must make our grievances public; that furthermore, not to make them public means that we are cooperating with evil, and I think it's basic to our theory that non-cooperation with evil is as important as cooperation with good, so that the act of marching gives one a public opportunity to disassociate himself from an evil that is present in the society, while

he is also making claims to that society for redress of those grievances.

Q So, on the one hand, it is a method of communicating a grievance and making a protest against something?

A And it is also, I think, a very important psychological factor in the life of an oppressed people.

Q That was the point that I was coming to that you have not covered. Now, will you tell us what you mean by that?

A I think any person who has lived as a minority, as persecuted minority inevitably builds up a tremendous amount of hostility against persons who have persecuted him, and that hostility has to be expressed in various ways. I think apart from marches, it is expressed destructively, either destruction of the person himself, or in terms of chaotic outbursts against the society. But non-violent demonstration give an opportunity for the person to express that hostility or just grievance against a society in a very constructive way, and it tends to relieve the tension. We have used -- well, in the instance of the killing of Jimmie Lee Jackson in Marion, Alabama, there was a tremendous furor and hostility on the part of the people of that community and that whole area. We deliberately decided to walk with his casket for a period of about six miles because in the

very act of walking and making public protest, you have a channel to release some of this energy, and some of this hostility. Similar kinds of incidents have been used, and I think the non-violent movement has traditionally used marches as a very healthy escape valve following bombings in places like Nashville, Tennessee. I think the students immediately marched downtown some five thousand strong. If there is no channel, if people are allowed to simply mill around and the frustration increases, then it is sort of like a pressure cooker. It explodes somewhere.

Q Well, as I followed your testimony so far, a march is a method of communicating a protest and a grievance. It is a disassociation with evil on the part of the marcher, and it provides an escape valve for pent-up emotions, is that true?

A There is probably one other thing too, and that is it is a very effective power leveler in a community, that is, it puts the burden of enforcement of an unjust law on an unjust situation on the system. For instance, in Birmingham where the society was segregated, when people decided to disassociate themselves from that segregation, it ended up costing the city a tremendous amount of money to maintain segregation, so that the city was put in a position of

having to choose to pay for its sins, or do away with them, and finally when you develop enough power so their sins begin to cost them tremendous sums of money and begin to hurt business, they usually manage to get a little religion.

Q It has an economic sanction then?

A Yes.

Q Now, let's see if there are not more -- is it or not important for an individual to have hope and to feel involved in matters of importance?

A Yes, I think it is.

Q I want to give you an illustration. Assume a Negro boy without the opportunities of much or any education in a ghetto is surrounded by extensions of needy all about him. Every time he picks up a newspaper, if he does, or turns on the television, he sees some affluent young man coming down the steps with a girl with a mink stole around her shoulders and getting in a Cougar car and he knows he will never have that chance. What feeling wells up inside that man?

A I imagine a tremendous bitterness.

Q Well, now, if he can have a way in which he, as an individual, can participate in trying to rectify what he regards as wrong, does it give him a sense of dignity and

importance that is of value to him as an individual and a man?

A I think it does, but only if it is effective. I think people can fight for rights and against wrong, and especially people who find themselves oppressed and persecuted by the society at large.

Q So long as he makes progress, he feels he has a chance, however minimal?

A I think as long as there is some progress, hope remains.

Q So, those considerations and others enter into the opinions of the people in the movement who believe that not only do they have a constitutional right to demonstrate, but that it has social efficacy?

A Yes.

Q Now, what is your connection with the movement as regards to the staging and the arranging of these demonstrations?

A Well, I guess I have usually been pretty much in charge of the staging, or at least being a link between Dr. King, who operates at a rather philosophical, moral level, and the staff that is responsible for translating this into practical details.

Q Now, was there an exception to your usual routine with regard to the march that occurred on the 28th of

March?

A Yes, there was.

Q What was the exception?

A Well, I think that I just wasn't here, nor was there any part of our working staff or field staff along with Dr. King. We usually -- well, I would say if we were organizing a march or demonstration as a total staff, we would usually have a period of time where our field staff would work with the Marshals, train them, be on the scene supervising them, and this would, in a sense, go ahead of Dr. King's participation and involvement, so that he comes in to participate in a well-structured and organized occasion.

Q Without attempting to assess or shift blame in any way, that did not occur with reference to this march?

A No.

Q If Dr. King is permitted by the order of this Court to march on next Monday, will Dr. King take any part in that march until you, personally, and he, personally, are satisfied that the conditions that have produced peaceful marches in the past have been established?

A We would not march unless the conditions to maintain a peaceful march had been established.

Q And are you here with your staff for the sole purpose of seeing that those conditions are established prior to the march?

A That's correct.

Q Now, in all of these other marches in which you have participated that have been non-violent, have you cooperated fully with the police?

A Yes, we have.

Q And have you sought and solicited their help?

A Yes; on many occasions where it was possible.

Q Do you know of any march which occurred which followed the jailing of the leaders of the march?

A Yes, I do.

Q Where was that?

A Savannah, Georgia.

Q And what happened?

A Well, I think on that occasion a group of about two or three thousand persons were marching and in the process of the march all of the leadership -- in fact, anybody that was identifiable as staff or Marshals along with the leadership was picked up by the police and put in jail, and the crowd then, which had been a very organized march for about two or three miles, followed the police back to the Police Station

more as a mob. The police sought to forcibly disperse them, and a riot ensued.

Q And were there buildings burned and people hurt?

A I think there were two buildings burned and quite a few people hurt.

Q For the record, have you read Dr. Martin Luther King's article of April 16th which appears in Look Magazine?

A Yes, I have.

Q State to the best of your knowledge whether that fully and accurately states his views about the workings and theory of non-violence?

A It certainly does.

MR. BURCH: May that be marked and made an exhibit, please?

MR. GIANOTTI: No objection.

THE COURT: All right. Give it the next number.

(The document above referred to was marked Exhibit 5 to the testimony of the witness, and same will be found among the exhibits hereto.)

MR. BURCH: That is all I have.

THE COURT: Before you get to your cross-examination, it is about time for a recess, and I say again to the guests that you can go to the snack bar in the basement or on the seventh floor, and the recess will be approximately twenty minutes, not more than twenty minutes.

(RECESS)

THE COURT: All right, gentlemen, are you ready to proceed?

MR. BURCH: If Your Honor please, before we start the cross-examination of this witness, Reverend Lawson is supposed to make a speech at Southwestern, and although he is not under subpoena, I didn't want to excuse him if anyone anticipated further need for him.

MR. GIANOTTI: That is fine. He may go.

THE COURT: Opposing counsel says fine. You are excused, Reverend Lawson.

All right, Mr. Manire, you may proceed.

CROSS-EXAMINATION
BY MR. MANIRE:

- Q Mr. Young, I believe you are a leader in the so-called non-violent school of demonstration, is that correct?
- A Yes, sir.
- Q Now, the non-violent school is to be distinguished from the so-called passive school?
- A I would imagine.
- Q You do not promote pacifity? You promote what is known as non-violence?
- A That's correct.
- Q In carrying this out, this is your real tool -- this is your overall means of obtaining what you seek?
- A That's correct.
- Q You have techniques, then, of endeavoring to do this?
- A That's correct.
- Q These become virtual doctrine within your organization, do they not, some of these techniques?
- A That's correct.
- Q And certainly one of the techniques is appealing to groups by means of speeches, wouldn't that be true?
- A That's correct.
- Q Most of the people to whom you appeal are people with,

I believe it has been expressed by you, some hostility in their feelings?

A I don't know about most. I would say that some are hostile.

Q A substantial number of people with a hostile underlying feeling?

A They certainly have a reason to be hostile, and I would say that the church-oriented group is much less hostile.

Q Well, the young man that Mr. Burch represented to you as presenting the picture in the newspaper feels a sense of hostility, does he not?

A That is correct.

Q He is a substantial part of the group to which you appeal?

A That's true.

Q And, in any event, whether they are hostile or not, these are people who have resentments of one kind or another about the way they have been treated, isn't that true?

A That's correct.

Q So, it is important to you as this particular technique, you have agreed you used -- it's important to obtain a

response from these people?

A That's true.

Q In obtaining this response, you are endeavoring to bring them to a point of carrying out your non-violent scheme?

A That's true.

Q Have you not developed as part of your technique and your doctrine a sort of lingo, or sort of vocabulary that goes with it?

A I would imagine so, yes.

Q Well, you know you have, do you not?

A Yes.

Q For example, instead of a large march, you say massive marches, wouldn't that be true?

A Yes, sir.

Q Massive has a connotation, as far as you are concerned, a deliberate concern, of much greater?

A That's correct.

Q A more passionate connotation. When Dr. King says, "We are going to plague the Congress.", that would leave a great deal to the imagination of the listener, would it not?

A That's correct.

Q Only Dr. King and probably those within his inner circle would know the suggestive significance of the word "plague", true?

A That's correct.

Q This is deliberately done by the movement?

A I don't think it is so deliberate, so much as it is just a part of the Baptist preacher tradition that dominates our movement.

Q Nevertheless, it is a part of your technique, and you have indicated a part of your deliberate technique?

A Yes.

Q If it is part of the Baptist movement, it, nevertheless, has proved its value to you, has it not?

A That's correct.

Q You have continued to use this form of appeal. For example, escalation, and you don't mind if I touch on a word that you like?

A That's one I really don't like.

Q But you use it?

A I really try not to. I think it is part of our vocabulary these past couple of years almost inevitably.

Q I join you in not liking that word, but it is a word that Dr. King makes considerable use of, correct?

A Correct.

Q That word "escalation" is sort of a new word in the vernacular, because it has overtones of the Viet Nam war and the like?

A Correct.

Q Is that why you don't like it?

A That's right.

Q Let us say if Dr. King has been quoted as saying, "An injunction is not going to turn us around." Let's assume that he has been quoted as saying that. That certainly isn't designed to manifest any contempt for a Federal Court, is it?

A No, it isn't.

Q It is designed to get a response from a crowd, isn't it?

A That's correct.

Q So, here we have a situation in which these various techniques are used down, let's assume, until today, to arouse people who have underlying feelings of hostility and who have resentments within them to perform what I understand you to say is a non-violent exhibition?

A That's correct.

Q Actually, the real effect of this is to bring them

up to a point of near violence within their own feelings, is it not?

A No, I don't think so.

Q How do you know where to draw the line?

A Well, I think where we draw the line is in terms of the whole notion that we will do nothing to destroy neither person nor property, and I think you would find, would be very hard pressed to find Dr. King saying anything that would be a personal attack on anybody, even if that person has to be an enemy. But I think the net effect of this, strangely enough, is pretty much like a psychiatrist's couch, that it is much better to express one's hostility verbally, rather than to bottle them up and act them out. I think this is what the Baptist Church has done, unfortunately, for a couple of hundred years, which is probably why you haven't had social upheaval until now.

Q They did it by accident, and you all are doing it by design?

A They released the people's frustrations and pointed them toward a reward to come in Heaven in the sweet bye and bye. I think we try not to totally release the frustrations to the hereafter, but to channel them to something direct and concrete as Dr. King said last night -- the new

Jerusalem of coming here in Memphis, so that it is a social transition --

Q (Interrupting) Of a formerly biblical concept?

A That's right.

Q In any event, there is a need for less of this hostility and you gentlemen go about appealing to the crowd to maintain, through your techniques, this response from them, and if you will allow this expression, it works up the crowd, does it not? You don't want an unresponsive crowd, do you?

A Can I put it this way: You really have to see this in a cultural context. I will say Dr. King gives the same -- well, he did Sunday -- gave essentially the same speech in the Washington Cathedral, a very cold Episcopal Church, as he gave last night, and it didn't work up the crowd in the Washington Cathedral. I think that it basically was not a part of their church tradition to respond emotionally. The problem is that everything about Negro culture is very emotional -- the music, the language. I think in our staff meetings that people coming in and hearing us having a meeting, they may hear us about to fight, and yet this is the way we come to one mind.

Q You have distinguished the meeting in the Cathedral in

Washington with the one last night, with which I am not familiar, the two different groups of people, one emotional and the other passive.

A That's correct.

Q So, the effect of all these techniques and the use of these means is to build up the feeling of the crowd?

A That's correct.

Q So, then, you have reached a point where having built them up, there must be some letting off of steam of one sort or another?

A That's correct.

Q And you are dealing with an emotional people, an emotional element?

A That's correct.

Q And you trust to some sort of technique that you have to satisfy yourselves that this is going to be channeled properly into good ways of achievement, rather than to what they may have been used to heretofore, which is to try to do harm?

A Well, actually, they haven't been used to try to do harm. The people who hear Dr. King speak, who come to the churches, would never pick up a brick.

Q So, it is necessary for them to be aroused, is what

I am really saying?

A I think that certainly the people in the churches it is probably necessary to arouse, because they are very scared. They are nervous about the whole period of social change. I would say that Dr. King talking -- well, we have deliberately done our work with the more militant elements and the young people in the community in small groups rather than mass meetings, simply because they need more light than heat.

Q Well, we might be concerned here with mass meetings and massive marches, as I understand has been the expression used about what is planned for Memphis?

A That's right.

Q In any event, you have to have followers to survive and to actually become successful in your effort, so it is necessary to build up the feelings of the people, but then you have to run some risk when you reach the ultimate in the build-up of what they are going to do with all this build-up, isn't that true?

A That's correct.

Q You hope that it is going to express itself in the form of non-violence and you make your best effort to have it do this?

A We usually know what we are building them up for, and we do.

Q You can't really say on this stand that you have always been successful?

A Yes, sir, we have; really we have.

Q And really, this doesn't count last week in Memphis?

A No, I think it does.

Q Your answer is that that was successful?

A I think that the testimony has been that the main body of marchers did not respond violently.

Q That's right. We have heard all sorts of explanations for it. That could be right. In any event, you don't regard that as a successful march, do you?

A No, I don't.

Q And whatever your answers to my questions may be, we have had difficulty with that particular march, have we not?

A That's correct.

Q We don't want to repeat that, do we?

A That's correct.

Q You were not here last time?

A No.

Q If you had been, I understood your testimony to be

that you think things might have been better?

A Not if I had been here by myself -- if the staff had been in here.

Q Dr. King was willing to come in here without having his staff and lead that march?

A Yes.

Q Do you have reason to believe that anyone might participate in this march who is at cross-purposes with Dr. King?

A No, I don't.

Q Do you feel that there could be? I refer, of course, to the issue of violence or non-violence?

A I imagine in a city of this many people there could be.

Q What investigation have you made to determine whether there is or not?

A I think we have made an effort to try to totally survey the community, both the student population, the so-called Black Nationalists groupings, even a grouping that traditionally operates outside the law, who would have no relationship with our marches, with our movement, but who might under cover of our demonstrations try to promote some kind of illegal activity.

Q With all of this, you haven't found out anybody who is endeavoring to be at cross-purposes with you?

A I think we have not found anybody whom we have gone to and explained what our purposes are who have rejected our appeal to cooperate.

Q So you are speculating with reference to whether these groups are doing any work at this time, if you don't know?

A We have no evidence that anybody is.

Q You are willing to testify to the Court, however, that you assume the responsibility for the success of this march if Dr. King's group leads it and participates?

A I think what we have been saying is that we assume the responsibility for the persons who participate in the march.

Q Assuming there are others here who have feelings of hostility and there are others who professionally seek to cause trouble, they would certainly, being human, respond to these means, these techniques of raising the emotions of the group, would they not? They would necessarily fall in with it, would they not?

A Yes.

Q And, to use one of Mr. Burch's favorite words, won't

it be a concomitant of that, that all elements would, therefore, be disturbed, not only the non-violent, but all elements?

A Stirred how?

Q Emotionally by Dr. King's appeal?

A That's correct.

Q Wouldn't you think that might be called a form of "emotional brakemanship", just to go along with me on a little analogy?

A No. I really can't, because Dr. King has never preached violence, and I have heard, for instance, on the corner of 125th Street and 7th Avenue, men like Malcolm X preach the most vile hostilities, and, to my knowledge, no riot ever erupted from the kind of preaching he did, and I have always assumed that even the violent rhetoric has a kind of catharsis about it, and year in and year out people hear this and say, "Amen" and have a beer and go home, and the fact is that even the Kerner Commission reports that none of the advocates of violence have, to their knowledge, been able to consciously and deliberately stir up violence through oratory; so I really don't see the connection there as being a necessary concomitant.

Q You think Dr. King's oratory would more or less limit

itself, in effect, to those who are disciples of the non-violence movement?

A No, I think that oratory itself, no matter what it says, has a cathartic effect, that oratory in itself does not produce action. This has been my experience.

Q Now, you realize that respectable civil rights groups and individuals in the United States have in magazines and leading articles throughout the country, have expressed a real concern over Dr. King's ability to control violence hereafter by reason of what happened in Memphis on the 28th? You know that to be true?

A Yes.

Q In other words, the NAACP has expressed that from its central headquarters, a real concern with Dr. King's ability to control violence?

A I think that the NAACP has almost no history of mass action. Their work has been largely through the Courts, through a lobbying operation in Congress, through political action, and I would say this is the area of their expertise, and I think of Mr. Wilkins very much like my father, and yet my father thinks that this is terrible, because he is seventy years old, and he is comfortable, and he is a part of the establishment. So that the patience --

Q (Interrupting) Your father is part of the establishment?

A Yes, sir. And the feelings of the thirteen hundred garbage workers or sanitation workers wouldn't register with him at all, so that he shares none of the anguish.

Q Your father and Mr. Wilkins --

MR. BURCH: I think Mr. Manire interrupted the witness.

MR. MANIRE: I am sorry. Go ahead and finish what you were about to say.

THE WITNESS: With my father, change in two or three years is all right. He is patient with the idea of change, because he is eating very well. But, for thirteen hundred men on strike who are not eating very well, there is an urgency about the situation that in most societies, and I would like to remind you that there is almost no place else in the world where people even assume that this kind of change should come about non-violently except Martin Luther King and the Southern Leadership Conference -- there is no tradition of non-violence anywhere else in the world, in labor and even in most areas of our own

government, and certainly when America felt oppressed by Britian, they didn't seek non-violence to seek redress of grievance. So I say we do have probably the only vested interest in non-violence in this society, and we intend to make it work, and we wouldn't want to run any unnecessary risks, because it jeopardizes what Dr. King has made a way of life for him.

BY MR. MANIRE:

Q Are you through?

A Yes, sir.

Q Here is what I asked you about -- it is true, is it not, that responsible members of the NAACP, which is an old organization, I gather from you that it may not be in touch completely at this time?

A I didn't say that.

Q Well, we will drop that then. Isn't it true that Mr. Wilkins has indicated a concern about the success of Dr. King with reference to control of violence?

A That's correct.

Q Now, Mr. Wilkins is not at cross-purposes with you, is he?

A Yes, he is in some ways.

Q In other words, aren't you both promoting the Negro civil rights cause as a general proposition?

A Yes, sir, but there is a slight difference.

Q I said cross-purposes, and you say slight difference.

A Well, then, no cross-purposes.

Q Hasn't Senator Brooke of Massachusetts, expressed the same kind of concern?

A Yes, he has, but I think he is at cross-purposes.

Q All right. You are entitled to that, and just for the interest of saving time, I will accept it, and let's pass on. I am just asking if he hasn't expressed that, and you say he has. So, there is an expression, not just in this community, but generally, that you all have had to contend with about the very essence of your system, is there not?

A Yes, sir.

Q So, you have to, have to vindicate this system, do you not?

A Yes.

Q And you want to vindicate it in Memphis?

A Yes.

Q In view of all I have asked you about this lingo and

the expressions and the techniques that you have used to build up your following, would it not be more desirable at this time were there a march permitted for Dr. King to use moderate expressions, or for the leadership here of your group to moderate their expressions to the people?

A It wouldn't, for the reason that our concern for non-violence is really not the only concern present here. If we were only concerned with making a witness to non-violence, that would be true. But we are also in the midst of a very long-standing social situation with sanitation workers, where they have tried for months now every moderate means conceivable and with no results, and in a sense, anything that doesn't potentially advance this cause or help their cause is really not worth the effort.

Q Mr. Young, there is only one time you are really going to be able to make a decision that really satisfies you as to whether this march will or will not be violent, and that is when you come upon the scene with Dr. King and decide then whether to join in the march or not, isn't that true?

A And I am not sure that we will know until it is over.

Q I mean in advance of the march.

A That is correct.

Q So, it is going to be real necessary for you all to develop and build up this march in advance, and then everyone comes down to the staging area and makes that decision at that time as to whether you and Dr. King will march?

A No. I would think that with our staff in the community constantly working, if there didn't seem to be some kind of disruptive influence growing throughout the community, and if we had not satisfied ourselves that the practical considerations offered us some insurance of non-violence, we would know more about what kind of march to expect then. For instance, I was in a march with some five hundred thousand people in New York, and it could have been a real mob, and yet as they came out of Central Park, the street was barricaded and only, I think, about ten people were allowed to come through the barricade at a time, and that meant a march of five hundred thousand people almost were going about ten abreast into the middle of the street fairly isolated from each side, and I would say that in that kind of march it is very easy to identify trouble and control it.

Q On your direct examination, unless I misunderstood you,

you said that you and Dr. King or Dr. King -- I don't know whether you are going to be in the march or not, because you are sort of a background figure in staging the march. --

A I will be in the line.

Q Dr. King isn't going to march if he comes on this staging scene and finds it shows prospects of violence, is that true?

A That's correct.

Q So you really can't make that decision until that time prior to the march, can you?

A I would say that we have some way of at least --

Q (Interrupting) You would be testing the water all the way?

A Right.

Q What is going to happen if we build up a march down there and everybody has answered to your rallying call for non-violence and they have come to march and it is decided by Dr. King that he is not going to march? What happens then? Doesn't that tend to create a chaotic and disorderly situation?

A No. I think this is where we can take full advantage of Dr. King's ability to speak to people.

Q Again, we have to measure that with the background of what we know to be our experience with him. I have one or

two other things to touch on, about the school business.

A We have called off marches on other occasions, however.

Q I understand. We know the newspapers are reliable, but they may not always get every word in the right place, so I won't assure you that Dr. King said this, but it was printed in this morning's paper, and it says, "Dr. King urges people to leave work and school to join Monday's march." It was my understanding that that wasn't being promoted in the testimony, am I correct about that?

A I think Reverend Lawson's testimony was that this had not come up in the Strategy Committee and no deliberate effort has been made to keep the people out of school.

Q If Dr. King is urging --

A (Interrupting) I don't remember the context of that remark. However, I do remember his saying that people should leave work and school to join the march.

Q Let me read you this from the Memphis World, March 30th, 1968 -- "Public school students would have been about ten thousand strong in the Friday march"-- that's the one that was snowed out -- "Nearly all the Negro students in the city junior and city high schools were eager to bow to King's demand that they stay out of the classrooms. Some grade school students would have been in the demonstration

as well as college students."

Is that misinformation? Did he make a demand that they stay out of school?

A No. I think that is misinformation.

Q The reason I ask you that -- you can understand in the temper of a community such as this probably is at this time, you don't just strike off an emotional development like that, do you? It might last for days and weeks, and it is something to consider, wouldn't you think?

A Yes, it is.

MR. MANIRE: I have nothing further.

REDIRECT EXAMINATION
BY MR. BURCH:

Q Mr. Young, you were examined by Mr. Manire about what he calls the lingo or the vernacular of the movement. They talked about escalation and talked about threats to plague Congress. They used the word "plague". Give me an example of an incident when you plague somebody.

A Well, we plagued the City of Birmingham.

Q How did you plague the City of Birmingham?

A Really by marching down to City Hall every day for about forty-five days and having a prayer meeting.

Q You plagued them by getting upon the steps of the courthouse and praying for the city fathers?

A That's right.

Q And that's within the context of plague, as you use it, praying for the people who oppose you?

A That's right.

Q Have you ever conducted marches where there was much stronger competition for leadership among dissonant elements than exists here?

A Yes, certainly. I guess it would be true in New York or Detroit.

Q Are SNICK and Black Power and The Invadors and the other more active -- I won't use the words, "more active", but the more forcible groups that advocate more forcible action, are they much stronger in those communities, both in numbers and in influence than they are in Memphis?

A Yes, they are.

Q And, yet, have you conducted perfectly peaceable marches in all those places?

A Yes, we have.

Q Now, Mr. Manire asked you, I believe, that you couldn't make up your mind right until the last moment whether this march was going to come over. Now, I want to ask you if this

is a correct review of the supervision that you will have over all the steps of this march: First, are you and the members of your staff in constant contact with all segments of the Negro community, to try to find out where there may be opposition to peaceable methods, who is making such advocacy and how best to contain it?

A Yes, we are.

Q Is that constant and continuous?

A Yes, it is.

Q And as these situations develop, if they do develop, will you take appropriate measures to cope with them?

A We have tried.

Q Now, if in the end despite your best effort and despite your missionary activities, when you get down there on the day of the march and it looks like there is going to be violence, will Dr. King be available with the persuasion that has characterized his activities all over the world, to try to bring these people to non-violent solutions?

A Yes, he will.

Q And will it only be after all of these preliminary, supervisory, preparatory steps have failed that that march would be called off?

A I assume that's correct.

MR. MANIRE: I don't know whether to object to the question or the answer, Your Honor, but I would like to hear the witness testify at some point.

THE COURT: Well, you either have to object or not object, Mr. Manire.

MR. MANIRE: I don't object, Your Honor.

BY MR. BURCH:

Q What he is saying is he doesn't like what is being said.

MR. MANIRE: I always get sort of attracted by Mr. Burch.

THE COURT: Maybe you are mesmerized, Mr. Manire.

MR. MANIRE: I am.

MR. BURCH: I have no further questions.

THE COURT: Mr. Young, you have testified here in answer, I believe, to one of Mr. Manire's questions on cross-examination that you honestly believe that if a march is allowed to be held on Monday under a Court order with restrictions along the lines tendered in the pleadings by the defendants that it will be a peaceable march, is that right?

THE WITNESS: Yes.

THE COURT: And you say, I believe, that Dr. King thinks the same thing?

THE WITNESS: That's correct.

THE COURT: And I believe you say that, or said at the beginning of the hearing, that you have complete authority to speak for Dr. King in this hearing here today as to all issues we are considering, is that correct?

THE WITNESS: That's correct.

THE COURT: Now, just speaking generally, to what extent do you think Dr. King is laying his reputation on the line here, vis-a-vis, the march on Monday? Assuming that things go bad, turn sour Monday, under what circumstances or circumstance do you think Dr. King would consider it a black eye for him personally and his movement personally as against something going wrong and Dr. King saying, "That is something we couldn't control and it is not our fault."

THE WITNESS: I would say that Dr. King, very much like Ghandi, whom he tries to follow,

considers it -- would consider it a repudiation of his philosophy and his whole way of life, and I think that he has so firmly accepted the philosophy of non-violence and accepted this as his personal mission in life that -- well, I don't know when I have ever seen him as discouraged and depressed as a few days after last Friday's march. Now, I don't think that Dr. King would give up non-violence if it doesn't work in Memphis. I don't think the whole career of the man depends on what happens in Memphis, because, as I have said before, one of the things that he says over and over again is that it is very difficult to have a non-violent movement in a climate that is totally violent, and at a time when your nation is at war. I think history shows that most of the riots that have occurred in America have occurred during or just after wartime when the whole country is attuned to violence. So, he realizes the difficulties of maintaining a climate, a non-violent movement in the midst of a total climate of violence. But, nevertheless, I would say that he is committed to doing all that is within his power to do just that.

THE COURT: Well, I believe you said in answer

to a question on cross-examination, that you and Dr. King and your group would consider yourselves directly responsible for the conduct of those people who are accepted in and become a part of the parade?

THE WITNESS: That is correct.

THE COURT: But, wouldn't it also be true that if there was some violence of someone who is not a part of the parade, say, a rag-tag group following along with you, behind you, beside you, if there was violence from people like that as to whom you say you do not accept responsibility, that would be bad for Dr. King and his movement, would it not?

THE WITNESS: Yes, it would, and we have accepted some measure of responsibility for even that.

THE COURT: So, as far as the normal public understanding of such matters and the way it would be handled in the news media, most likely, it would be just as bad for Dr. King if you had some violence of people that you may not technically accept responsibility for as it would be if people broke out of your parade and committed violence, would it not?

THE WITNESS: Yes, it would.

THE COURT: So, I suppose the meat of it is

that actually Dr. King is laying his reputation on the line for everybody, as far as his national image is concerned, is that right?

THE WITNESS: That's probably correct.

THE COURT: Anything further?

MR. MANIRE: Nothing further.

THE COURT: All right. Step down.

(WITNESS EXCUSED)

THE COURT: Call your next witness.

MR. BURCH: Call Mr. John Spence.

JOHN SPENCE

The said witness, having been first duly sworn,
testified as follows:

DIRECT EXAMINATION
BY MR. BURCH:

Q You are Mr. John Spence?

A I am, sir.

Q Are you an employee of the Federal Government,
Mr. Spence?

A I am.

Q In what capacity?

A I am with the U. S. Commission on Civil Rights in the
Southern Field Office; with offices in this building.

Q And what is your job? What do you do?

A I travel some for the Commission in Arkansas, Mississippi
and Tennessee. Ours is an information agency. We gather
information, and we dispense it.

Q So you try to keep your agency informed as to what the
civil rights picture in its broad sense is in the communities
within your jurisdiction?

A That's true.

Q Now, as bearing upon your qualifications to do that,
what has been your prior experience in interpreting community

attitudes?

A I was a newspaper man in this city for fifteen years. I was a newspaper man in other cities from the time I came out of the Service.

Q What did you do in this community for fifteen years?

A I reported for the Press Scimitar. I covered City Hall. I covered political campaigns. I covered many public meetings, both in the white and Negro communities.

Q In your fifteen years as a reporter, did you establish acquaintances and contacts throughout the total community that gave you access to information as to how people are thinking and feeling in the community?

A I think so.

Q Now, Mr. Spence, I want to ask you your opinion about one question only. State whether or not, in your opinion, there is a greater or smaller probability of violence in this community if the march is allowed to go on under the leadership of Dr. Martin Luther King on the one hand, or if it is called off or Dr. King not permitted to lead it on the other?

A I think the frustrations that would result if Negro citizens of this community were not permitted to follow Dr. King would be very great. I think that would be a

greater hazard than to permit the march.

Q And that is your considered opinion as an employee of the Federal Government charged with the duty of establishing and forwarding information upon these subjects?

A Yes, sir.

MR. BURCH: I have no further questions.

MR. GIANOTTI: No questions.

MR. BURCH: One further question.

Q Are you under subpoena -- are you required by the process of the Court to testify here?

A I am, sir.

MR. BURCH: I have no further questions.

MR. GIANOTTI: Still no questions.

MR. BURCH: We have no further proof.

THE COURT: Any rebuttal proof?

MR. GIANOTTI: No, sir.

THE COURT: Gentlemen, I would like to see counsel in chambers for a few minutes, and then we will render some sort of written opinion the first thing tomorrow. We will adjourn now.

(ADJOURNMENT)

I hereby certify that the foregoing 210 pages are, to the best of my knowledge, skill and ability, a true and accurate transcript of my stenotype notes in the matter of

City of Memphis,
A Municipal Corporation,

Complainant,

versus

Martin Luther King, Jr.,
Hosea Williams, Reverend
James Bevel, Reverend James
Orange, Ralph D. Abernathy and
Bernard Lee, all Non-Residents
of the State of Tennessee,

Defendants.

No. C-68-80.

This 9th day of September, 1968.

Hardy L. Fly
Official Court Reporter
United States District Court
Western District of Tennessee