FEDERAL BUREAU OF INVESTIGATION

FREEDOM OF INFORMATION-PRIVACY ACTS SECTION

SUBJECT: VVAW

FILE NO: HQ 100-448092

SECTION: Enc 2728

PAGES REVIEWED: 78

PAGES RELEASED: 78

REFERRALS:

EXEMPTIONS:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

VIETNAM VETERANS AGAINST THE WAR, et al., Plaintiffs	Civil Action No. TCA 1843
v.	
RICHARD KLEINDIENST, individually and as Attorney General of the United States, et al., Defendants	

NOTICE OF DEPOSITION

TO: William H. Stafford, Jr.
United States Attorney
United States Courthouse
Pensacola, Florida 32502

Stewart J. Carrouth
Assistant United States Attorney
United States Courthouse
Tallahassee, Florida

Benjamin C. Flannagan, Attorney
Department of Justice
Washington, D.C. 20530

Attorneys for Defendants

PLEASE TAKE NOTICE that the plaintiffs will take the deposition of Stark King, Attorney, Department of Justice, Division of Internal Security, on Friday, February 23, 1973, at 1:00 p.m., at the office of Forer and Rein, 430 National Press Building, 529 14th Street, N.W., Washington, D.C., before a Notary Public or other person authorized to administer oath. The deposition will continue from day to day until concluded.

You are invited to cross-examine.

Dated: New York, N.Y.
February 9, 1973

Respectfully submitted,

Doris Peterson
James Reif
Morton Stavis
Nancy Stearns
c/o Center for Constitutional Rights
588 Ninth Avenue
New York, New York 10036

Jack Levine
1427 Walnut Street
Philadelphia, Pennsylvania 19102

Cameron Cunningham
Brady S. Coleman
502 West Fifteenth Street
Austin, Texas 78701

Larry Turner
P. O. Box 1251
Gainesville, Florida 32601

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

VIETNAM VETERANS AGAINST THE WAR, et al.,

Plaintiffs

v.

RICHARD KLEINDIENST, individually and as Attorney General of the United States, et al.,

Defendants

Civil Action
No. TCA 1843

NOTICE OF DEPOSITION

TO: William H. Stafford, Jr.
United States Attorney
United States Courthouse
Pensacola, Florida 32502

Stewart J. Carrouth
Assistant United States Attorney
United States Courthouse
Tallahassee, Florida

Benjamin C. Flannagan
Attorney
Department of Justice
Washington, D.C. 20530

Attorneys for Defendants

PLEASE TAKE NOTICE that the plaintiffs will take the deposition of Garry Owen Watt, Special Agent, Federal Bureau of Investigation, on Monday, February 26, 1973, at 10:00 a.m., at the office of Forer & Rein, 430 National Press Building, 529 14th Street, N.W., Washington, D.C., before a Notary Public or other person authorized to administer oath. The deposition will continue from day to day until concluded.

You are invited to cross-examine.

Dated: New York, N.Y.
February 9, 1973

Respectfully submitted,

Doris Peterson
James Reif
Morton Stavis
Nancy Stearns
c/o Center for Constitutional Rights
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Larry Turner
P. O. Box 1251
Gainesville, Florida 32601

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

VIETNAM VETERANS AGAINST THE WAR, et al.,

Plaintiffs

v.

RICHARD KLEINDIENST, individually and as Attorney General of the United States, et al.,

Defendants

Civil Action
No. TCA 1843

NOTICE OF DEPOSITION

TO: William H. Stafford, Jr.
United States Attorney
United States Courthouse
Pensacola, Florida 32502

Stewart J. Carrouth
Assistant United States Attorney
United States Courthouse
Tallahassee, Florida

Benjamin C. Flannagan
Attorney
Department of Justice
Washington, D.C. 20530

Attorneys for Defendants

PLEASE TAKE NOTICE that the plaintiffs will take the deposition of any and all persons who had the responsibility for conducting any or all inquiries within the Internal Security Division of the Department of Justice and the Federal Bureau of Investigation to determine if the following telephones (212)725-5680, 5681, 5682, 5683; (512)451-2841; (904)378-0774; (305)681-7982; (501)521-7384, had been the subject of electronic surveillance, on Monday, February 26, 1973, at 1:00 p.m., at the office

of Forer & Rein, 430 National Press Building, 529 14th Street, N.W., Washington, D.C., before a Notary Public or other person authorized to administer oath. The deposition will continue from day to day until concluded.

You are invited to cross-examine.

Dated: New York, N.Y.
February 9, 1973

Respectfully submitted,

Doris Peterson
James Reif
Morton Stavis
Nancy Stearns
c/o Center for Constitutional Rights
588 Ninth Avenue
New York, New York 10036

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Gainesville, Florida 32601

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

VIETNAM VETERANS AGAINST THE WAR, ET AL., Plaintiffs, v. RICHARD KLEINDIENST, ET AL., Defendants.	Tallahassee Civil Action No. 1843
	MOTION FOR PROTECTIVE ORDER VACATING NOTICE OF DEPOSITION

Pursuant to Rule 26(c), Federal Rules of Civil Procedure, A. William Olson, Assistant Attorney General, Internal Security Division, United States Department of Justice, Guy L. Goodwin and Stark H. King, Attorneys, Internal Security Division, United States Department of Justice and Gary Owen Watt, Special Agent, Federal Bureau of Investigation move this Court for an order vacating the notice of their depositions by the plaintiffs herein in the above captioned case and directing that such discovery shall not be had. (The noticed depositions were scheduled to be taken February 23, 1973 and February 26, 1973, but have now been continued, by consent of the plaintiffs, until disposition of this motion by the Court.)

Defendant Richard G. Kleindienst, et al., hereby joins in the motion of the above named individuals, and further moves this Court for an order vacating the notice of the deposition by the plaintiffs of any and all persons responsible for conducting the necessary inquiries constituting the basis for the denial of electronic surveillance set forth in the affidavit of Benjamin C. Flannagan filed in

this action on December 4, 1972, and further directing that such discovery shall not be had. (This deposition, noticed for February 26, 1973, has also been continued by plaintiffs pending disposition of this motion.)

In support of this motion, the above named individuals and the defendants herein rely upon the attached supporting memorandum and the record herein.

Respectfully submitted,

A. WILLIAM OLSON
Assistant Attorney General

WILLIAM H. STAFFORD, JR.
United States Attorney

STEWART J. CARROUTH
Assistant United States
Attorney

EDWARD S. CHRISTENBURY
BENJAMIN C. FLANNAGAN
Attorneys
Department of Justice
Washington, D. C. 20530
Phone: 202-739-2361

CERTIFICATE OF SERVICE

I hereby certify that on this date I served copies of the foregoing Motion for Protective Order Vacating Notice of Deposition and a supporting memorandum upon all parties by mailing a copy thereof by United States mail, postage prepaid, to the following counsel of record:

Doris Peterson, Esquire
James Reif, Esquire
Morton Stavis, Esquire
Nancy Stearns, Esquire
c/o Center for Constitutional Rights
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New York, New York 10036

Jack Levine, Esquire
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Larry Turner, Esquire
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Gainesville, Florida 32601

2/22/73
Date

EDWARD S. CHRISTENBURY
Attorney
Department of Justice
Washington, D. C. 20530
Phone: 202-739-2361

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

VIETNAM VETERANS AGAINST THE WAR, ET AL., Plaintiffs, v. RICHARD KLEINDIENST, ET AL. Defendants.	Tallahassee Civil Action No. 1843 MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER VACATING NOTICE OF DEPOSITION

Statement of the Case

This action was initiated by the plaintiffs herein on July 10, 1972 seeking declaratory and injunctive relief and monetary damages, and asserting a violation of their constitutional rights under the First, Fourth, Fifth, Sixth and Eighth and Ninth Amendments to the United States Constitution; their statutory rights under 18 U.S.C. § 2510-20, 28 U.S.C. § 2201-02, 42 U.S.C. § 1983, 1985(3) and 1988, and 47 U.S.C. § 605, and seeking to invoke the jurisdiction of this Court under 28 U.S.C. § 1331, 1343(4), 1346, 1651, 2201 and 2202. The facts underlying plaintiffs' complaint are that on July 7, 1972 each of the plaintiffs herein was subpoenaed to appear and testify on July 10, 1972 before the Federal grand jury sitting in Tallahassee, Florida investigating alleged plans of certain members of the Vietnam Veterans Against the War (VVAW) to disrupt the Republican National Convention to be held in Miami, Florida, in violation of various criminal statutes. Following the appearance of each of the plain-

tiffs, and other witnesses, the grand jury, on July 13, 1972, returned an indictment charging six individuals,[1] including plaintiffs Camil, Foss, Kniffin, Michelson and Perdue with violation of certain Federal criminal statutes arising out of alleged plans to unlawfully disrupt the Republican National Convention.[2]

In their complaint challenging the issuance of the subpoenas compelling their appearance before the grand jury in Tallahassee, plaintiffs asserted that as a result of this action by the defendants they were unable to participate in certain demonstration activities in Miami scheduled by the VVAW to coincide with the Democratic National Convention which was held in Miami from July 10, 1072 until July 13, 1972, and specifically that they were subpoenaed by the defendants for the purpose and with the effect of preventing and deterring the plaintiffs in the exercise of their First Amendment rights. Plaintiffs further assert that the service of the subpoenas on such short notice also effectively denied them of their Sixth Amendment right to retain and consult with legal counsel. Lastly, plaintiffs' complaint alleges that the defendants herein have and continue

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1/On October 18, 1972 a superseding indictment was filed by the grand jury adding two additional defendants.

2/The indictment charged violations of Title 18, U.S.C., § 231(a)(1) (civil disorders which may obstruct, delay and adversely affect commerce); Title 26, U.S C., §§ 5861(d) and 5871 (unlawful possession of an unregistered destructive device); conspiracy to violate Title 18, U.S.C., § 2101 (interstate travel or communication to perpetrate a riot); Title 18, U.S.C., § 844(i) (malicious damage and destruction, by means of explosives, of personal and real property used in interstate commerce); Title 18, U.S.C., § 844(h) (use of explosives to commit felonies prosecutable in courts of the United States), and Title 26, U.S.C., § 5861(c) and (d); and Title 18, U.S.C., § 371 (conspiracy).

to conduct unlawful and unconstitutional surveillance of the VVAW National Office.

Following the filing of their answer to the plaintiffs' complaint in which they denied all allegations of unlawful conduct, the defendants herein on December 4, 1972 filed in this action a Motion to Dismiss, or in the Alternative, for Summary Judgment. In their motion, the defendants stated: (1) in reliance upon the findings in Beverly v. United States, 468 F.2d 732, 747 (5th Cir. 1972) that there was no impropriety in the conduct of the grand jury in Tallahassee; (2) that each witness was afforded ample opportunity to consult with counsel; (3) that neither the national office of the VVAW nor the regional offices in question had been the subject of electronic surveillance (See affidavit of Benjamin C. Flannagan, filed December 4, 1972); (4) and lastly, that each of the defendants herein were acting in furtherance of their official duties and within the scope of their authority and thus were absolutely immune from civil suit. No action was taken by the Court following the filing of defendants' motion. Thereafter, on February 10, 1973 plaintiffs served upon defendants a motion seeking: to amend their complaint as to certain allegations; to add additional parties plaintiff; and to add Department of Justice attorneys Guy L. Goodwin and Stark H. King as parties defendants. Plaintiffs also served their Memorandum in Opposition to defendants' Motion to Dismiss. Following service of their motion, plaintiffs then noticed the deposition of A. William Olson, Assistant Attorney

General, Internal Security Division, United States Department of Justice, Guy L. Goodwin and Stark H. King, Attorneys, Internal Security Division, United States Department of Justice and Gary Owen Watt, Special Agent, Federal Bureau of Investigation, to be taken on February 23, 1973 and February 26, 1973. The plaintiffs additionally sought to depose on February 26, 1973 all persons responsible for conducting the necessary inquiries constituting the basis for the denial of electronic surveillance set forth in the affidavit of Benjamin C. Flannagan filed in this action on December 4, 1972.

After consultation between counsel for all parties, plaintiffs have now, at the request of the defendants, continued the noticed depositions pending this Court's consideration of defendants' motion to vacate the noticed depositions.

Discussion

I.

The Prosecuting Attorney Should not be Made to Answer Through Civil Discovery for Actions Taken in the Course of a Pending Criminal Prosecution

The special role of a prosecuting attorney in our judicial system, when acting within the scope of his authority, has long been recognized to be, of necessity, a privileged position, and like that of a judge, immune from actions by aggrieved persons challenging the performance of his duties. Bethea v. Reid, 445 F.2d 1163, 1165 (3rd Cir. 1971); Guedry v.

Ford, 431 F.2d 660, 663 (5th Cir. 1970; Bauer v. Heisel, 361 F.2d 581, 589 (3rd Cir. 1966). The breadth of this immunity was early enunciated in Yaselli v. Goff, 12 F.2d 396 (2nd Cir. 1926) and expressly approved by the Supreme Court in Barr v. Matteo, 360 U.S. 564, 569 (1959). In its decision the Court in Yaselli stated that "[a] United States Attorney if not a judicial officer, is at least a quasi judicial officer, of the Government. He exercises important judicial functions, and is engaged in the enforcement of the law. The reasons for granting immunity to judges . . . [equally] apply to the public prosecutor in the performance of the duties which rest upon him." 12 F.2d at 404.

In upholding this grant of prosecutorial immunity, the courts have grounded their determination upon the recognition that the public interest is not best served if upon each decision by the prosecutor, either to prosecute or not to prosecute, he must later respond in a civil suit, instituted by one who feels himself aggrieved, challenging the merits of and the basis for his determination. Madison v. Gerstein, 440 F.2d 338, 340 (5th Cir. 1971). For the criminal judicial system would soon cease to function effectively, if for each decision by a judge based upon his best judgment of the law or for each decision by a prosecutor upon his best assessment of the evidence, they would each later have to defend their decisions in a subsequent civil suit -- whether meritorious or not. See, Bradley v. Fisher, 80 U.S. 335, 347 (1871). Thus, to preclude this incumberance, the law now recognizes that a prosecutor, as a judge, is immune from civil suit by

an aggrieved party challenging his actions taken while acting within the scope of his authority. Madison v. Gerstein, supra; Guedry v. Ford, supra; Cf. Norton v. McShane, 332 F.2d 855 (5th Cir. 1964).

The purpose for this immunity and the end it is designed to accomplish is equally applicable to the present action where the plaintiffs herein, five of which are defendants in the companion criminal case, United States v. Briggs, GCR No. 1353 (N.D. Fla.) are seeking to utilize the tools of civil discovery as a vehicle for challenging the prosecutor's determination to proceed before the grand jury in that action and the sufficiency of the evidence upon which he relied. As a judge could not be compelled after each ruling to appear for depositions taken by the aggrieved party challenging his decision, so a prosecutor also should not be required to submit to the taking of his deposition when such is sought in a civil suit challenging his actions taken in furtherance of a pending criminal trial. If the plaintiffs herein are permitted to accomplish what they are seeking -- the depositions of Messrs. Olson, Goodwin and King, the prosecutors in their pending criminal case -- they will have successfully pierced the immunity with which the prosecution has traditionally been clothed, and will have been permitted to accomplish indirectly what the law say they cannot achieve directly.

The depositions sought herein of Messrs. Olson, Goodwin and King are thus impermissible and their taking violative of both the protection and the spirit of the prosecutor's immunity. It is therefore both necessary and proper that this Court for the reasons stated, vacate the notice of their taking and direct that these depositions shall not be had.

II.

The Taking of the Noticed Depositions Improper in the Present Context of this Civil Action

1. Were the depositions of Messrs. Olson, Goodwin and King not precluded, as we strongly contend, because of their prosecutorial immunity, the taking of their deposition would nonetheless be improper in the present context of this case. As stated, the plaintiffs herein, five of which are defendants in the companion criminal case, are seeking discovery of the prosecutors in that case, Messrs. Olson, Goodwin and King, in a civil action in which the thrust of the allegations are inextricably interwoven with many of the facts to be proved in the pending criminal prosecution. Moreover, the two cases are presently proceeding in tandum, with a hearing set for March 6, 1973 in the criminal case on the defendants' outstanding motions, including motions for discovery. It is thus clear under these circumstances, that any discovery sought in the civil action of the prosecutors in the criminal case is, in the present posture of the two cases, so laiden with conflict as to render its taking, at this time, impermissible. As the Court observed in Campbell v. Eastland, 307 F.2d 478, 487 (5th Cir. 1962), "[a] litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain . . . [information] he would not otherwise be entitled to for use in his criminal suit." In the present case, the effect, if not the purpose, of the proposed discovery is to subvert the civil rules into a device for obtaining pretrial

discovery against the Government of information not available to the defendants in the criminal trial. Or, as stated by Judge Bell in his concurring opinion in Campbell, "[t]he end result [of the discovery sought by plaintiffs is] tantamount to allowing discovery under Federal Rules of Civil Procedure in a criminal proceeding, something we are powerless, as [is] the trial court, to authorize." 307 F.2d at 492. Accordingly, the depositions of Messrs. Olson, Goodwin and King, sought herein, are improper, at the present time, and their taking should be stayed by this Court. Campbell v. Eastland, supra; United States v. One 1964 Cadillac Coupe DeVille, 41 F.R.D. 352 (S.D.N.Y. 1966); United States v. Steffes, 35 F.R.D. 24 (D. Mont. 1964); United States v. Maine Lobstermen's Association, 22 F.R.D. 199 (D. Me. 1958).

2. Moreover, the notice of deposition of Special Agent Gary Owen Watt should also be vacated in that he possesses no information relevant to the present litigation. As observed by the Court in United Air Lines, Inc. v. United States, 26 F.R.D. 213, 219 n. 9 (D. Del. 1960) "[i]t is well established that discovery has limits and that these limits grow more formidable as the showing of need decreases." Here, plaintiffs Horton and Beverly in a related action -- a contempt hearing upon their refusal to testify before the grand jury after a grant of immunity -- sought to subpoena Gary Owen Watt for the same purpose they are now seeking to take his deposition, for information relating to the allegation of unlawful electronic surveillance. In that proceeding, upon a representation by Government counsel that Special Agent Watt had no knowledge relevant to the allegations of electronic surveil-

lance asserted therein (In Re: Grand Jury Witnesses, No. T Misc. 1/122 (N.D. Fla.), Vol. 9, p. 72-75) this Court refused to compel his appearance and quashed his subpoena (Id. at 75-76). It is thus similarly appropriate in the present action, involving many of the same parties, counsel and allegations, that this Court vacate the notice of taking of the deposition of Special Agent Watt for the same reason the Court found it necessary to quash his subpoena to appear and testify in the companion contempt proceedings, and direct that such discovery shall not be had.

III.

Plaintiffs Should not be Permitted Through Discovery to go Behind the Affidavit of the Defendants Denying any Unlawful Electronic Surveillance of the Plaintiffs

Plaintiffs in their complaint have alleged that the defendants (Richard Kleindienst, Attorney General; L. Patrick Gray, Acting Director of the Federal Bureau of Investigation; and William H. Stafford, Jr., United States Attorney) ". . . through their agents have and continue to conduct illegal and unconstitutional surveillance of the National VVAW offices." (Comp. ¶23) In response to this allegation the defendants filed an affidavit stating specifically that no such surveillance had been conducted.[3/] See affidavit of Benjamin C. Flannagan filed December 4, 1972. Plaintiffs now seek through discovery to go behind the Government's affidavit to test its sufficiency and have noticed the deposition ". . .

3/As the allegation in the complaint alleged only that the defendants or their agents had conducted the unlawful surveillance, the affidavit responded only to this allegation and stated that the Federal Bureau of Investigation has con-

of any and all persons who had the responsibility for conducting any and all inquiries within the Internal Security Division of the Department of Justice and the Federal Bureau of Investigation . . ." in determining the basis for the denial of electronic surveillance contained in the affidavit of Mr. Flannagan. Such discovery is not permissible. As Mr. Justice White stated in his concurring opinion in Gelbard v. United States, 408 U.S. 41, 71 (1972) ". . . where the Government officially denies the fact of electronic surveillance . . . the matter is at an end . . ." See also, In Re Tierney, 465 F.2d 806, 812 (5th Cir. 1972). It is therefore improper now that the Government has made such a denial for the plaintiffs to continue the inquiry and seek to go behind the denial. Their notice to depose all persons responsible for obtaining the information necessary for the denial should therefore be vacated and this Court should direct that such depositions should not be had.

Respectfully submitted,

A. WILLIAM OLSON
Assistant Attorney General

WILLIAM H. STAFFORD, JR.
United States Attorney

STEWART J. CARROUTH
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

VIETNAM VETERANS AGAINST THE WAR, et al., Plaintiffs, v. RICHARD KLEINDIENST, et al., Defendants.	)	Civil Action No. TCA 1843

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' "MOTION TO AMEND COMPLAINT AND TO ADD PARTIES OR IN THE ALTERNATIVE TO INTERVENE PURSUANT TO RULES 15, 20, 24 OF THE FEDERAL RULES OF CIVIL PROCEDURE"

Statement of the Case

The Complaint herein was filed on July 10, 1972 and shortly thereafter the Court denied plaintiffs' motion for a class-action order. The defendants answered the complaint on October 3, 1972.

Thereafter the Court requested the defendants to file a memorandum of law in support of the defenses alleged in their answer, fixing November 28, 1972 for hearing hereon. On November 15, 1972 plaintiffs requested a postponement of that hearing date of at least two weeks to allow plaintiffs to receive defendants' memorandum and respond thereto. On November 21, 1972 the Court continued the hearing date until December 12, 1972.

On November 30, 1972 the defendants served their alterative motion to dismiss or for summary judgment (filed December 4, 1972).

On December 6, 1972 the Court on the motion ore tenus

of the plaintiffs continued the hearing until a date certain later to be fixed by the Court.

On January 19, 1973 the Court entered its Order for Pre-Trial Conference in this cause, inter alia, requiring discovery to be completed by March 2, 1973 and setting the pretrial hearing for March 12, 1972.

On February 6, 1973 defendants, under the constraints of the Order for Pre-Trial Conference, served Interrogatories on the plaintiffs with respect to the allegations of and attachments to the Complaint.

On February 8, 1973 plaintiffs filed the instant motion and their "Memorandum in Opposition to Defendants' Motion to Dismiss".

On February 16, 1973 the Court rescinded its Order for Pre-Trial Conference.

Discussion

1. To grant plaintiffs' motion to add parties plaintiff and to file an Amended Complaint would materially prejudice the defendants.

On February 6, 1973 the defendants mailed their Interrogatories to the plaintiffs with respect to the allegations and attachments of the Complaint.

The proposed Amended Complaint drops the claims for money damages on the allegations concerning alleged denial of counsel and the allegations on the alleged use of a government agent or informant in plaintiffs' organizational meetings (Plaintiffs' Opposition, page 3), but adds new allegations with respect to alleged abuse of process, conspiracy, electronic surveillance, use of an informant in violation of Sixth Amendment rights to counsel, and organizational harassment. (Proposed Amended Complaint: First, Third, Fourth, Fifth and Sixth Causes of Action).

The defendants' Interrogatories to plaintiffs, of course, do not encompass the matters and theories raised for the first time in the proposed Amended Complaint.

While it is true that the defendants have been generally on notice of the "occurrence" upon which plaintiffs' suit is predicated, that is the Grand Jury proceedings which resulted in the indictment of some of them, even assuming the propriety of defendants' seeking discovery beyond the allegations of the original Complaint, it cannot be fairly said that defendants were on such notice as to require them to have anticipated and made discovery with respect to the new allegations and theories of recovery embodied in the proposed Amended Complaint. Thus if plaintiffs' motion were allowed, the defendants would essentially have to start anew.

Many of the new allegations and theories could have been included in an Amended Complaint filed as a matter of course in July, 1972, for at that time plaintiffs were aware of the interest of Messrs. Hall, Jones, Hudgins and Mahoney in this litigation and of the participation of Messrs. Guy Goodwin and Stark King as Government attorneys in the Grand Jury proceedings. The new allegations concerning an alleged informant or agent in the defense camp also could have been presented in July, 1972. See Motion to Disclose Agents or Informants in the Defense Camp filed December 5, 1972 in United States v. John K. Briggs, et al., N.D. Fla., GCR-1353. Moreover, it appears from the pleadings that plaintiffs could have presented their new allegations on electronic surveillance as early as August, 1972, for such is the date of the Hall affidavit attached

to the proposed Amended Complaint. Indeed the other affidavits as to alleged electronic surveillance attached to the Amended Complaint were executed on July 13, 1972 or thereabouts. Plaintiffs' other theories of abuse of process, conspiracy and harassment could equally well have been included in the original Complaint and are essentially afterthoughts to that Complaint.

In plaintiffs' own words they now seek to "amend their complaint to add facts which are an integral part to the original occurrences which are the basis for this action" (Plaintiffs' Memorandum, page 2) and to add new parties and new theories of recovery in an Amended Complaint which "refers back to the same occurrence which forms the basis of the original complaint" (ibid.). But there is no suggestion by plaintiffs that their delay in waiting until February 8, 1973 to seek to add parties and amend their Complaint was due to oversight, inadvertance or execusable neglect. Plaintiffs do not assert that the new "facts" are newly discovered, see Horn v. Allied Mutual Casualty Co., 272 F. 2d 76, 80 (10th Cir. 1959), or that they were without full knowledge of the facts as long ago as last Summer, compare Darcy v. North Altantic & Gulf S.S. Co., 78 F. Supp. 662, 664 (E.D. Pa. 1948). As the Court of Appeals for this Circuit stated in Freeman v. Continental Gin Company, 381 F. 2d 459, 469 (5th Cir. 1967):

> It is clear that lack of diligence is reason for refusing to permit amendment. So holding is Wheeler v. West India S.S. Co., 205 F. 2d 354 (2 Cir., 1953), a decision concurred in by the draftmen of the Federal Rules. Where there has been such lack of diligence, the burden is on the party seeking to amend to show that the delay "was due to oversight, inadvertance, or excusable neglect." Frank Adam Electric Co. v. Westinghouse Electric & Mfg. Co., 146 F. 2d 165, 167 (8 Cir., 1945).

> Leave will be denied unless he shows some "valid reason for his neglect and delay." Carroll v. Pittsburgh Steel Co., 103 F. Supp. 788, 790 (W.D. Pa. 1952).

Plaintiffs, however, have proffered no explanation for their delay in seeking to amend their Complaint and add parties. They have not met their initial burden of showing some valid reason for their delay.

Moreover, to allow plaintiffs to amend their Complaint, adding new parties, factual allegation and theories, would impose on the defendants the added, and we believe unwarranted, burden of further discovery, preparation and expense. See Albee Homes, Inc. v. Lutman, 47 F.R.D. 258, 259 (E.D. Pa. 1969). Similarly, to allow plaintiffs to amend and add parties will also postpone consideration by the Court of defendants' defense of absolute immunity from suit, one of the bases for dismissal of this action already set forth in defendants' December 4, 1972 alternative motion to dismiss or for summary judgment. At a minimum defendants will have to replead to the Amended Complaint, revise and renew their alternative motion to dismiss or for summary judgment and await plaintiffs' response thereto before there is any hearing thereon. But the plaintiffs should not be allowed to so delay the Court's consideration of the defendants' defenses. As the Court of Appeals for this Circuit also stated in Freeman v. Continental Gin Company, supra, 381 F. 2d at 469, 470 (where amendment was not allowed after summary judgment had been granted):

> A busy district court need not allow itself to be imposed upon by the presentation of theories seriatim. Liberality in amendment is important to assure a party a fair opportunity to present his claims and defenses, but "equal attention

> should be given to the proposition that there must be an end finally to a particular litigation." Friedman v. Transamerica Corp., 5 F.R.D. 115, 116 (D. Del., 1946). Some courts have refused as untimely amendments sought after a motion for summary judgment has been made. E.g., Eisenmann v. Gould-National Batteries, Inc., 169 F. Supp. 862, 864 (E.D. Pa., 1958); Gaylord Shops. Inc. v. South Hills Shoppers' City, Inc., 33 F.R.D. 303 (W.D. Pa., 1963). There is even more reason for refusing to allow amendment long after summary judgment has been granted. * * * Much of the value of summary judgment procedure in the cases for which it is appropriate - * * * - would be dissipated if a party were free to rely on one theory in an attempt to defeat a motion for summary judgment and then, should that theory prove unsound, come back long thereafter and fight on the basis of some other theory.

Here plaintiffs seek to raise other theories in the face of the defendants' December 4, 1972 alternative motion to dismiss or for summary judgment made as to the allegations and theories of the original Complaint. Plaintiffs have already dropped allegations from the present Complaint after defendants have initiated discovery with respect thereto. The new factual allegations and theories may well meet a similar end should defendants be required to defend with respect thereto. Moreover, they appear to be filed not only in an effort to bolster the original complaint but also to prolong the life of the controversy, at least throughout the life of the pending criminal proceedings, perhaps to attempt to have a vehicle for discovery in the civil forum on matters where discovery may be denied in the criminal case.

If defendants are correct in the efficacy of their defense of absolute immunity to the claims of the original Complaint, a fortiori, no leave should be granted to allow plaintiffs to file an Amended Complaint as to the same "occurrences" because of the legal futility of such an

amendment. See Forman v. Davis, 371 U.S. 178, 182 (1962).

2. To grant plaintiffs' motion to add parties defendant would also materially prejudice the defendants.

Plaintiffs now seek to add two Attorneys of the Department of Justice as parties defendant to this action. These Attorneys are members of the trial team in United States v. John K. Briggs, et al., N.D. Fla., GCR-1353, now pending in this Court. To allow them to be named as defendants in this action would defeat the purpose of the grant of absolute immunity historically accorded Federal prosecutors, which is to save them from the vexations of litigation arising out of the performance of their duties as public prosecutors. Cases illustrating their immunity from suit are set forth in Part II of the memorandum filed in support of defendants' alternative motion to dismiss or for summary judgment (pages 13 and 14), and in Part I of defendants' memorandum in support of their motion for a protective order vacating notice of deposition. As was explained in one of the cases there referred to, Yaselli v. Goff, 12 F. 2d 396 (2d Cir. 1926), at 404, absolute immunity is accorded Federal prosecutors to ensure the full performance of their duites without fear of the threat of suit or the altendant burden of the defense thereof. To allow Messrs. Goodwin and King to be named as defendants herein on the eve of the criminal prosecution would give the appearance that they are in fact subject to suit and that they, and other Federal prosecutors similarly situated, will not be shielded from the burdens of defending themselves from suits arising out of the performance of their duties. And

while being named as defendants herein may not cause them any personal concern or otherwise detract them from the resolute performance of their prosecutorial duties, still they should not be subject to such a burden in the public interest.

When persons are immune from suit, they should be dropped, not added, as parties defendant. Not being parties, they, of course, cannot be dropped. But certainly they should not be added, under Rule 21 of the Federal Rules of Civil Prccedure or otherwise, when such action would not only be a futile act, see Foman v. Davis, 371 U.S. 178, 182 (1962), but would be contrary to established law and public policy. See Yaselli v. Goff, supra, and the other cases cited in defendants' memoranda aforesaid.

Conclusion

For the reasons stated, defendants respectfully submit that plaintiffs' "MOTION TO AMEND COMPLAINT AND TO ADD PARTIES OR IN THE ALTERNATIVE TO INTERVENE PURSUANT TO RULES 15, 20, 24 OF THE FEDERAL RULES OF CIVIL PROCEDURE" should be denied.

Respectfully submitted,

A. WILLIAM OLSON
Assistant Attorney General

WILLIAM H. STAFFORD, JR.
United States Attorney

EDWARD S. CHRISTENBURY
Attorney, Department of Justice

STEWART J. CARROUTH
Assistant U.S. Attorney

BENJAMIN C. FLANNAGAN
Attorney, Department of Justice
Washington, D.C. 20530
Phone: 202-739-3032

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' "MOTION TO AMEND COMPLAINT AND TO ADD PARTIES OR IN THE ALTERNATIVE TO INTERVENE PURSUANT TO RULES 15, 20, 24 OF THE FEDERAL RULES OF CIVIL PROCEDURE"

was served on the plaintiffs by mailing copies thereof to their Attorneys; Doris Peterson, Esquire, James Reif, Esquire, Morton Stavis, Esquire, Nancy Stearns, Esquire, c/o Center for Constitutional Rights, 588 Ninth Avenue, New York, New York 10036; Jack Levine, Esquire, 1427 Walnut Street, Philadelphia, Pennsylvania 19102; Cameron Cunningham, Esquire, Brady S. Coleman, Esquire, 502 West Fifteenth Street, Austin, Texas 78701; Larry Turner, Esquire, P.O. Box 1251, Gainesville, Florida 32601 on February 24 1973.

Benjamin C. Flannagan

BENJAMIN C. FLANNAGAN
Attorney, Department of Justice
Washington, D.C. 20530
Phone: 202-739-3032

Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

VIETNAM VETERANS AGAINST THE WAR and SCOTT CAMIL, et al, Plaintiffs, v. RICHARD KLEINDIENST, individually and as Attorney General of the United States, et al, Defendants.	Civil Action No. TCA 1843

MEMORANDUM IN SUPPORT OF MOTION
TO AMEND COMPLAINT AND ADD PARTIES

Plaintiffs initiated this action immediately prior to thei attendance in Tallahassee, Florida pursuant to Federal Grand Jury subpoena. This action challenges the constitutionality of those subpoenas, the alleged abuse by defendants of the subpoena power, and alleged illegal and unconstitutional surveillance of plaintif by defendants in conjunction with the grand jury proceeding.

Plaintiffs now seek to amend the pleadings herein to reflect matters that occurred during the time they remained under compulsory process and immediately thereafter. They further seek to add such parties as necessary for full relief of those injured by the subpoenas complained of herein.

A. This Court Should Permit Plaintiffs To Amend Their Complaint

It is by now established law that leave to amend pleadir under Rule of the Federal Rules of Civil Procedure should be free given unless there is some obvious prejudice to defendant or if

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there has been undue delay. Forman v. Davis, 371 U.S. 178 (1962); what is more, where the interests of justice requires, amendment should be permitted and even new defendants and new theories of recovery allowed where the amended complaint refers back to the same occurrence which forms the basis for the original complaint and defendants are thereby put on notice. Williams v. United States, 405 F.2d 234 (5th Cir. 1968).

Here plaintiffs seek to amend their complaint to add facts which are an integral part to the original occurrences whic are the basis for this action. The parties defendant they seek to add as part of their amended complaint have actual notice of the action as they were present and participated in early stages of the litigation opposing plaintiff's motion for a Temporary Restraining Order.

Neither trial nor pre-trial hearings have been conducted here and no prejudice will result to defendants if the requested amendments are permitted.

B. This Court Should Permit The Addition Of Parties

Under the terms of Rule 21 of the Federal Rules of Civil Procedure, "Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." See Askey v. C. & M. Service, 45 F.R.D. 242 (M.D. Penn., 1968). Rule 21 was intended to permit the addition as party to an action a person or persons who had been omitted through inadvertence, mistake or some other reason and whom it was later found desirable to add. Truncale v Universal Pictures Co., 82 F.Supp. 576 (S.D.N.Y. 1949).

Plaintiffs are members or staff of the Vietnam Veterans Against The War who were subpoenaed to appear before a federal

grand jury in Tallahassee, Florida during the week of July 10, 1972. Nearly all received their subpoenas on Friday July 7, requiring that they appear on Monday, July 10, 1972. Messrs. Hall Jones, Mahoney and Hudgins, who seek to be joined as parties were also subpoenaed to appear on July 10, 1972. [with the exception of Mr. Hudgins who received his subpoena on the evening of July 10 and was instructed to appear in Tallahassee by the morning of July 11]. Because of the shortness of time, they did not have the opportunity to consult with counsel prior to late Sunday nigh July 9 or early Monday morning July 10 when this action was filed They were therefore not able to be joined as parties prior to the time of filing. What is more, since the action was originall filed as a class action the persons who now seek to be added as parties plaintiff believed their interests would be adequately protected as members of the class litigating this action. When this Court rejected plaintiffs' class action allegations it becam apparent that Messrs. Hall, Mahoney, Jones and Hudgins must appear by name in this litigation for their rights to be protecte

Under the Federal Rules of Civil Procedure, it is appropr to join parties in one action if their claims arise out of the same occurrences and there are common questions of law and fact. Kenvin v. Newburger, Loeb and Co., 37 F.R.D. (D.N.Y. 1965); Baltimore & Ohio R. Co. v. Thompson, 80 F.Supp. 570 (D.Mo. 1948) What is more, since no hearings have yet been conducted in this litigation intervention is timely. Pure Oil Co. v. Ross, 170 F.2d 651 (7th Cir., 1948).

Finally plaintiffs Hall, Mahoney, Jones and Hudgins might be seriously prejudiced by a ruling against plaintiffs Camil, et al. They are, therefore, effectively "bound" by the determination herein and since they will not bring any extraneou

or disruptive issues into the litigation, this Court should grant their motion to be joined or in the alternative to intervene as parties plaintiff. International Mortgages and Investment Corp. v. Von Clemn, 301 F.2d 857 (2d Cir. 1962).

C. Plaintiffs Should Be Permitted To Add Parties Defendant

Plaintiffs herein seek to add as parties defendant Guy Goodwin and Stark King, attorneys for the Department of Justice, Division of Internal Security, who conducted the grand jury activities complained of herein. At the time of this action, plaint did not know of the involvement of Messrs. Goodwin and King in the occurrences herein or they would have been joined as parties defendant from the outset. Messrs. Goodwin and King were, it is alleged, parties to the occurrences in combination with the already named defendants, and, therefore, were parties to the deprivation of plaintiffs rights at all stages. It is therefore appropriate that the Court order that plaintiffs may add them as defendants herein. Poindexter v. Louisiana Financial Assista Commission, 258 F.Supp. 158 (E.D. La. 1966), aff'd 393 U.S. 17. See also Williams v. United States, 405 F.2d 234 (5th Cir. 1968)

CONCLUSION

The Federal Rules of Civil Procedure providing for joinder of parties was adopted in order to obviate the harsh common law adherence to technical rules of joinder. Kerr v. Compagnie de Ultsamar, 250 F.2d 860 (2d Cir. 1958).

If plaintiffs are not permitted to amend their complaint and to add parties herein, they will be forced to begin

new actions which would have to be consolidated with the instant action or tried independently. Since there has not yet been any hearing in this case defendant will not be prejudiced by the requested changes in the pleadings. Therefore consistent with the interests of justice and judicial economy, plaintiffs respectfully urge this Court to grant their motion to amend their complaint and add parties or permit intervention herein.

Respectfully submitted,

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Attorneys for Plaintiffs

Dated: New York, N.Y.
February 7, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

VIETNAM VETERANS AGAINST THE WAR and SCOTT CAMIL, et al, Plaintiffs, v. RICHARD KLEINDIENST, individually and as Attorney General of the United States, et al, Defendants.	Civil Action No. TCA 1843

MOTION TO AMEND COMPLAINT AND TO ADD PARTIES OR IN THE ALTERNATIVE TO INTERVENE PURSUANT TO RULES 15,20,24 OF THE FEDERAL RULES OF CIVIL PROCEDURE

Plaintiffs hereby move to amend the complaint herein to reflect matters relevant to, and an integral part of, the causes of action set forth herein which occured following the filing of the original complaint.

Plaintiffs further move pursuant to Rule 21 of the Federal Rules of Civil Procedure to add as parties plaintiff James Frank Hall, Timothy Jones, Richard Hudgins and Peter P. Mahoney.

This action was originally initiated as a class action. In the earliest stages of proceedings however this Court rejected plaintiffs' class action allegations and ruled that only named parties would be considered litigants.*

* This question arose when on the morning of July 10, 1972 the Court set down Plaintiffs' Motion for a Temporary Restraining Order in the afternoon and arrangements were made that only nam parties would not be called before the grand jury until the matter of the Temporary Restraining Order was resolved.

Because of this Court's ruling on class action, it is necessary to add as parties plaintiff other members of the Vietnam Veteran Against the War who were subpoenaed to appear before the Federal Grand Jury in Tallahassee during the week of July 10, 1972, both to vindicate their rights, which were violat by being detained in Tallahassee, and to bring before the Court all the facts relevant to this action. The grievances of plaintiffs Hall, Mahoney, Jones and Hudgins arose from the series of transactions complained of herein by plaintiffs Camil, et al.

There are questions of fact and law common to all plaintiffs. What is more, plaintiffs Hall, Mahoney, Jones and Hudgins might well be bound by a ruling with respect to plainti Camil, et al.

Plaintiffs finally seek to add as parties defendant Guy Goodwin and Stark King, attorneys for the Department of Justice, Division of Internal Security. Plaintiffs' claim against Messrs. Goodwin and King arose out of the occurrences complained of in this action and there are common questions of fact and law in plaintiffs' grievances against them and the oth defendants. At the time this action was initiated the involvement of Messrs. Goodwin and King in the operation of the grand jury was not known to plaintiffs. Their role in violating plaintiffs' rights emerged only during the course of the proceedings complained of. Therefore, plaintiffs now seek to add them as parties defendant.

Respectfully submitted,

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Attorneys for Plaintiffs

Dated: New York, N.Y.
February 7, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

VIETNAM VETERANS AGAINST THE WAR and SCOTT CAMIL, et al., Plaintiffs	:	Civil Action No. TCA 1843
v.	:	
RICHARD KLEINDIENST, individually and as Attorney General of the United States, et al., Defendants	:	

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS.

STATEMENT OF FACTS

This is an action by the Vietnam Veterans Against the War (hereinafter VVAW) and fourteen members and one staff worker of the organization. */ All of the individuals were subpoenaed to appear before a federal grand jury in Tallahassee, Florida, on July 10, 1972, **/ the first day of the Democratic National Convention and the day of the first scheduled VVAW anti-war demonstrations at the conventions, more than 400 miles away in Miami. Plaintiffs were then detained in Tallahassee pursuant to

* / The original complaint was filed by eleven individual plaintiffs. Four additional members of VVAW have moved to be added as parties plaintiff.

** / Richard Hudgins, one of the members who seeks to become a party to this action, was served with a subpoena in Virgina on the evening of July 10, and appeared in Tallahassee as directed on the morning of July 11, 1972.

subpoena throughout the Democratic National Convention,*/ despite the fact that their testimony was not needed by the government to obtain an indictment from the grand jury. The lack of need for plaintiffs' testimony is evidenced by the fact that seven plaintiffs were never even questioned by the grand jury and two of the plaintiffs who were questioned were indicted and, therefore defendants never seriously intended to obtain their testimony.

Plaintiffs have alleged that the subpoenas were served on them not for any legitimate government purpose, but in order to prevent them, in violation of their civil rights, from participating in anti-war demonstrations at the Democratic National Convention that had the very real potential for embarrassing the government.

Plaintiffs further allege that the subpoenas were composed on the basis of (and in some instances service was accomplished with the reliance on) illegal and unconstitutional electronic surveillance. Finally, plaintiffs have alleged that defendants continued their illegal and unconstitutional electronic surveillance of plaintiff James Frank Hall during and after the grand jury.

Defendants have moved to dismiss this action asserting the following:

a) Plaintiffs' claims concerning misuse of the grand jury have already been rejected by the Court of Appeals.

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*/ Three of the plaintiffs were released from their subpoenas on the next to last day of the Convention and eight were released on the final day.

b) Plaintiffs' claims of denial of counsel and allegations that a government informant participated in plaintiffs' meetings fail to state claims on which relief can be granted.

c) Defendants deny the electronic surveillance alleged by plaintiffs,and finally

d) Defendants claim immunity from suit under the doctrines of official immunity, quasi-judicial immunity and lastly, sovereign immunity.

Plaintiffs will treat below defendants' arguments concerning the misuse of the grand jury and the claims of immunity. Plaintiffs wish to note here that they have submitted an amended complaint to this Court in which (a) they have made additional allegations of illegal electronic surveillance by defendants which extend beyond defendants' current denials of surveillance, and (b) they no longer rely in their original claims for damages on their allegations concerning denial of counsel, or their claims of use of a government agent or informant in their organizational meetings.

A. Defendants' Motion To Dismiss Must Be Denied By This Court.

It has long been held in this Circuit that a motion to dismiss the pleadings should rarely be granted, even as against a claim of immunity. As the Court of Appeals for this Circuit set forth in Madison v. Purdy, 410 F.2d 99, 100 (5th Cir., 1969), rejecting the defense of prosecutorial immunity:

> First a court must accept as true all facts which are well pleaded in the complaint, and it must view such facts in a light most favorable to the plaintiff.

* * *

> Second, a complaint should not be dismissed unless there is no possibility that the plaintiff can recover under the allegations in the complaint. "In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957). International Erectors v. Wilhoit Steel Erectors & Rental Service, 5 Cir., 1968, 400 F.2d 465, 471; Bobby Jones Garden Apartment, Inc. v. Suleski, 5 Cir., 1968, 391 F. 2d 172, 177; Carmack v. Gibson, 5 Cir., 1966, 363 F.2d 862, 864.

It should be clear that since for the purposes of defendants' motion to dismiss plaintiffs' allegations are taken as true, defendants' motion must be denied. For if plaintiffs are correct in alleging a) that they were subpoenaed and detained in Tallahassee by defendants and their agents not to obtain information from them for the grand jury but rather in bad faith to prevent them from engaging in peaceful demonstrations at the Democratic National Convention, and b) that the subpoenas were drawn and served on the basis of information gained by means of illegal electronic surveillance conducted prior to, during, and following the week of July 10, 1972, they will be entitled to recovery. Therefore, defendants' Motion to Dismiss must be rejected by this Court.

B. Plaintiffs' Claims Are Not Foreclosed By The Findings Of This Court Or The Court Of Appeals In In re Grand Jury Proceedings Of Robert Wayne Beverly, et al.

Plaintiffs, as noted above, are members or staff of

Vietnam Veterans Against the War, who appeared in Tallahassee, Florida, on July 10, 1972, pursuant to subpoenas and remained there until they were released by defendants on July 12 or 13. */ Of the 15 plaintiffs, only two, plaintiffs Beverly and Horton were asked any substantial number of questions before the grand jury and only they, of the plaintiffs, were required to answer any questions. There is no indication that defendants were even interested in obtaining any information from the other plaintiffs In fact, seven of them were never even questioned by the grand jury at all, but nonetheless were held in Tallahassee through the last day of the Democratic National Convention. What does appear, however, is that defendants were very interested in detaining plaintiffs in Tallahassee for the duration of the convention, both to prevent them from participating in the anti-war demonstrations and to deprive the remaining demonstrators of many of the group of people that had planned the demonstrations and had done the pre-convention negotiations with the local police.

Even assuming that this Court correctly concluded that the subpoenas issued to plaintiffs Beverly and Horton were legitimate and the actions of defendants with respect thereto were duly authorized, that conclusion does not necessarily apply to the remaining plaintiffs who were never compelled to testify, and in several cases never even questioned before the grand jury. Therefore, plaintiffs are not bound by the findings of either this Court or the Court of Appeals concerning the validity of the challenged subpoenas.

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*/ As noted above, one of the plaintiffs was served on July 10 and arrived in Tallahassee on July 11.

C. Defendants Are Not Immune From Plaintiffs' Claims Of Civil Liability.

Defendants are the Attorney General of the United States the Director of the Federal Bureau of Investigation, the United States Attorney for the Northern District of Florida, and unknown agents of the above defendants. */

Defendants have argued that they are immune from civil liability under the doctrines of official immunity and quasi-judicial immunity because of the findings of fact made by this Court in holding plaintiffs Beverly and Horton in contempt of court.

Plaintiffs have argued above that they are not bound by those findings with respect to two of their numbers. Furthermore, plaintiffs argue that neither the doctrines of official immunity nor judicial immunity apply to the actions of defendants as alleged herein.

1. Official Immunity

In claiming official immunity in this action defendants cited Barr v. Mateo, 360 U.S. 564 (1959); Howard v. Lyons, 360 U.S. 593 (1959); and Spaulding v. Vilas, 161 U.S. 463 (1896), cases in which no constitutional rights were involved and where there were findings that the actions complained of were in fact within the scope of the defendants' authority. Those cases are plainly distinguishable from the within action and provide no

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*/ Plaintiffs, as noted above, have submitted a motion to this Court requesting permission to amend their complaint, by (amongst other amendments) naming two of defendants' agents, whose names were unknown to plaintiffs at the time of filing, as additional defendants, Guy Goodwin and Stark King, attorneys for the Intern Security Division of the Department of Justice. Plaintiffs also seek to add the United States of America as a party defendant.

protections for the defendants herein. This is an action for damages to plaintiffs for violation of their constitutional rights by defendants under color of law, but outside the scope of their legitimate authority. It is well established that civil rights damage actions are not barred by the immunity doctrine where the defendant or his agent was acting beyond the scope of his authority. Norton v. McShane, 332 F.2d 855 (5th Cir., 1964). What is more, this Circuit concluded in the Norton case that the doctrine of official immunity may be given more limited application under the Civil Rights Act than under common law. 332 F.2d at 861. The Second Circuit has gone even further, concluding that:

> To hold that all state officials in suits brought under §1983 enjoy immunity similar to that they might enjoy in suits brought under state law "would practically constitute a judicial repeal of the Civil Rights Acts."
>
> * * *
>
> (Therefore) ... the defense of official immunity should be sparingly applied in suits brought under § 1983. Jobson v. Henne, 355 F.2d 129, 133-4 (2d Cir., 1966).

It has been alleged by plaintiffs that defendants were acting well beyond their authority in using federal process to detain plaintiffs in Tallahassee, Florida. Therefore, though they might have been acting under color of law, they were in fact abusing their authority.

As plaintiffs noted above, for the purposes of a motion to dismiss, plaintiffs' allegations must be taken as true. Ther fore, defendants' motion to dismiss must be denied, even in the fact of their claims of immunity. Madison v. Purdy, supra;

Lewis v. Brautigam, 227 F.2d 124 (5th Cir., 1955). See also, Dombrowski v. Eastland, 387 U.S. 82 (1967), rejecting defendants' claims of Congressional immunity in the face of claims of abuse of Congressional subpoena power and conspiracy to deprive plaintiffs of their civil rights.

2. Quasi-Judicial Immunity

In addition to the above arguments concerning the inapplicability of the doctrine of official immunity, plaintiffs contend that the doctrine of quasi-judicial immunity is unavailable to shield defendants herein. For under civil rights law quasi-judicial immunity is plainly unavailable when the act or acts complained of are

a) beyond the scope of the defendant's authority, Lewis v. Brautigam, supra; Rousselle v. Perez, 293 F.Supp. 298 (E.D.La., 1968); Madison v. Purdy, 410 F.2d 99 (5th Cir., 1969; and

b) related to a police acitivity, Robichaud v. Ronan, 351 F.2d 533, 537 (9th Cir., 1965); Balistrieri v. Warren, 314 F.Supp. 824, 827 (W.D.Wisc., 1970).

Plaintiffs have alleged and seek to prove that the exercise of subpoena power by defendants were not only beyond the scope of their authority but was completely unrelated to any legitimate investigative or quasi-judicial function. What is more, since the actions complained of related to grand jury proceeding, defendants' activities were in the sphere of investigative or police acitivities rather than prosecutorial or quasi-judicial activities. See 8 Moore's Federal Practice 6.02(1)(6)

for discussion of the current nature of the grand jury as "'basically ... a law enforcement agency.'"

Finally, plaintiffs have alleged that defendants or their agents have conducted illegal electronic surveillance of them. If this is the case, defendants have violated specific federal statutes as well as the Constitution and are liable to plaintiffs under 18 U.S.C. § 2520 for both actual and punitive damages, as is "any person" who employs illegal electronic surveillance. Surely, defendants are not immune from those express statutory prohibitions and obligations by dint of their federal employment, or the applicable statutes would have so provided.

3. The United States of America Is Not Immune From Suit.

Lastly, the United States of America may be sued by plaintiffs under 28 U.S.C. § 1346 for there the government waives immunity from suit for actions founded upon the Constitution or federal statutes, up to a $10,000 amount.

CONCLUSION

For all of the foregoing reasons, plaintiffs respectfully urge this Court to deny defendants' motion to dismiss.

Respectfully submitted,

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Larry Turner
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Gainesville, Florida 32601

Attorneys for Plaintiffs

Dated: February 7, 1973

CERTIFICATE OF SERVICE

I hereby certify that copies of the following were sent by United States Mail, postage prepaid, on the 8th day of February, 1973, to, Counsel for Defendants, William H. Stafford, Jr., United States Attorney, United States Courthouse, Tallahassee Florida; Stewart J. Carrouth, Assistant United States Attorney, United States Courthouse, Tallahassee, Florida; Benjamin C. Flannagan, Division of Internal Security, Department of Justice, Washington, D.C. 20530; and Garvin Lee Oliver, Department of Justice, Washington, D.C. 20530:

1. Motion to Amend Complaint and to Add Parties Or In the Alternative to Intervene Pursuant to Rules 15, 20 and 24 of the Federal Rules of Civil Procedure.

2. Memorandum In Support of Motion to Amend Complaint and Add Parties.

3. Amended Complaint

4. Plaintiffs' Memorandum In Opposition to Defendants' Motion to Dismiss.

Nancy Stearns

Nancy Stearns

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

VIETNAM VETERANS AGAINST THE WAR, et al.,	:	
Plaintiffs	:	Civil Action No. TCA 1843
v.	:	
RICHARD KLEINDIENST, individually and as Attorney General of the United States, et al.,	:	
Defendants	:	

NOTICE OF DEPOSITION

TO: William H. Stafford, Jr.
United States Attorney
United States Courthouse
Pensacola, Florida 32502

Stewart J. Carrouth
Assistant United States Attorney
United States Courthouse
Tallahassee, Florida

Benjamin C. Flannagan
Attorney
Department of Justice
Washington, D.C. 20530

PLEASE TAKE NOTICE that the plaintiffs will take the deposition of Guy Goodwin, Attorney, Department of Justice, Division of Internal Security, on Friday, February 23, 1973, at 11:00 a.m., at the office of Forer and Rein, 430 National Press Building, 529 14th Street, N.W., Washington, D.C., before a Notary Public or other person authorized to administer oath. The deposition will continue from day to day until concluded.

You are invited to cross-examine.

Respectfully submitted,

Dated: New York, N.Y.
February 9, 1973

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

VIETNAM VETERANS AGAINST THE WAR, et al.,

Plaintiffs

v.

RICHARD KLEINDIENST, individually and as Attorney General of the United States, et al.,

Defendants

Civil Action
No. TCA 1843

NOTICE OF DEPOSITION

TO: William H. Stafford, Jr.
United States Attorney
United States Courthouse
Pensacola, Florida 32502

Stewart J. Carrouth
Assistant United States Attorney
United States Courthouse
Tallahassee, Florida

Benjamin C. Flannagan
Attorney
Department of Justice
Washington, D.C. 20530

Attorneys for Defendants

PLEASE TAKE NOTICE that the plaintiffs will take the deposition of A. William Olson, Deputy Assistant Attorney General, Internal Security Division, Department of Justice, on Friday, February 23, 1973, at 3:00 p.m., at the office of Forer & Rein, 430 National Press Building, 529 14th Street, N.W., Washington, D.C., before a Notary Public or other person authorized to

administer oath. The deposition will continue from day to day until concluded.

You are invited to cross-examine.

Dated: New York, N.Y.
February 9, 1973

Respectfully submitted,

Nancy Stearns

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Attorneys for Plaintiffs

STATE OF FLORIDA
COUNTY OF LEON

Wayne Beverly being duly sworn deposes and says:

I received a grand jury subpoena on July 7, 1972, to appear before a federal grand jury in Tallahassee, Florida on July 10, 1972.

I made calls to the National VVAW Office in New York City. Phone number: area code 212 725-5860 during April, May and June 1972. Upon information and belief I allege that this phone for which I had an expectation of privacy has been subjected to illegal electronic surveillance. This belief is based on the affidavit of Michael D. McCain annexed hereto.

Between the time I received the subpoena Friday afternoon July 7, 1972, and Monday morning July 10, 1972, I made calls from my lawyer's office, area code 512 478-9332 to the National VVAW Office in New York City, area code 212 725-5680. I also called the same number from my my home phone number in Austin, Texas, area code 512 451-2841 during the same period. Upon information and belief I allege that the phone in New York City for which I had an expectation of privacy has been subjected to illegal electronic surveillance.

Upon information and belief I further allege that my home phone in Austin, Texas, area code 512 451-2841, for which I had an expectation of privacy has been subjected to illegal electronic surveillance.

I also called area code 904 378-0774 in Gainesville and area code 501 521-7384 in Fayetteville, Arkansas during April, May and June 1972. I had an expectation of privacy for these numbers. Upon information and belief these numbers were subjected to illegal electronic surveillance. This belief is based on the annexed affidavit of Michael McCain.

Upon information and belief the grand jury subpoena served on me and the questions asked me before the grand jury were a result of electronic surveillance.

/s/
Wayne Beverly

Sworn and subscribed to before me this 13th day of July, 1972.

Notarized

STATE OF FLORIDA

COUNTY OF LEON

JOHN W. KNIFFIN, being duly sworn, deposes and says:

On Saturday, July 22, 1972, at the office and residence of the Vietnam Veterans Against the War, at 1636 Pepper Drive, Tallahassee, Florida, Mike Oliver, Myron Davis and I were trying to place a long distance call. Since I was unable to get a dial tone or an operator to answer I felt that some person or persons were interfering with our communications.

I hooked the phone to a tape recorder, turned up the volume and held the receiver of the phone against the speaker of the recorder, causing a feed back howl. The three of us in the room heard a male voice come on the line and say "thirteen-oh-one." Mike took the receiver and tried to talk to the person, but he said nothing more. Because of this and other strange occurrences such as a sudden decrease in volume soon after we begin some of our phone calls, I believe that some form of electronic surveillance is used on 575-2681.

I am a member of VVAW. Since I have been in Tallahassee for these grand jury proceedings I have often been at the VVAW office and residence in the city and have made use of the telephone there. When using the phone I have had an expectation of privacy.

s/John W. Kniffin
JOHN W. KNIFFIN

Sworn to and subscribed to before me this ____ day of Jul

s/Helen A Roberts
Dep Clerk

Wayne Beverly, being duly sworn and deposed says:

I am one of the witnesses subpoenaed before the Federal Grand Jury.

On the evening July 12, 1972 at approximately 8:30 I tried to make a phone call on Tallahassee number 575-2681. I picked the phone and did not get a dial tone. What I did get wa the sound of an already completed call. I could not understand this because I had not yet made a call and the phone was hung up After a few seconds I heard a voice and I said hello several times. A female voice asked me who and I replied Wayne Beverly. I was then informed that I was talking to Nancy Stearns, one of the lawyers involved in the case before the federal Grand Jury. We both ascertaind that the phones had been properly replaced fr a call that had been completed approximately 5 minutes before.

On belief and information, the interference with our calls resulted from illegal electronic surveillance on either one or both of the phones.

s/ Wayne Beverly

Sworn to & subscribed
before me this 13th
day of July, 1972

Witnessed this signature
this 13th day of July, 1972

s/ Helen A Roberts
Deputy Clerk

THIS IS AN IMPORTANT RECORD
SAFEGUARD IT.

PERSONAL DATA

1. LAST NAME - FIRST NAME - MIDDLE NAME	2. SERVICE NUMBER	3. SOCIAL SECURITY NUMBER
MCCAIN, MICHAEL DAVID	2281[illegible]	433 70 2704

4. GRADE, RATE OR RANK	5. PAY GRADE	6. DATE OF BIRTH (DAY / MONTH / YEAR)
CPL	E-4	19 / 11 / 46

7. PLACE OF BIRTH (City and State or Country)	8. DATE OF BIRTH (DAY / MONTH / YEAR)
CHAMPAIGN, ILLINOIS	19 / 11 / 46

9. SELECTIVE SERVICE DATA	10. DATE INDUCTED (DAY / MONTH / YEAR)
NA	NA

TRANSFER OR DISCHARGE DATA

11. TYPE OF TRANSFER OR DISCHARGE	12. STATION OR INSTALLATION AT WHICH EFFECTED
RELEASE FROM ACTIVE DUTY	NACS-6, MACG-28, 2dMAW, MCAS, CPNC 28533

13. AUTHORITY AND REASON	14. EFFECTIVE DATE (DAY / MONTH / YEAR)
EXPIRATION OF ENLISTMENT PARA 5DD MARCORPERSMAN	01 / 09 / 69

15. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE	16. CHARACTER OF SERVICE	17. TYPE OF CERTIFICATE ISSUED
MACS-6, MACG-28, 2dMAW, MCAS, CPNC	HONORABLE	DD3 MCR

18. COMMAND TO WHICH TRANSFERRED	19. REENLISTMENT CODE
12TH MARINE CORPS DISTRICT	RE - 1

SERVICE DATA

20. DATE OF LAST PREVIOUS ENTRY INTO ACTIVE SERVICE (DAY / MONTH / YEAR)	21. LENGTH OF SERVICE AT TIME OF ENTRY INTO CURRENT ACTIVE SERVICE	22. TERM OF SERVICE (Years)	23. DATE OF ENTRY (DAY / MONTH / YEAR)
24 / 05 / 71	XX YRS XX MOS XX DAYS ☐ ENLISTED (First Enlistment) ☐ ENLISTED (Prior Service) ☐ REENLISTED	03	25 / 05 / 66

24. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE	25. PRESENT OR LAST ASSIGNED DUTY AND GRADE, RATE OR RANK	26. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State)
NONE	PRIVATE (E-1)	SAN FRANCISCO, CALIF.

27. MAILING ADDRESS AT TIME OF SEPARATION (Number, Street, City, County, State and ZIP Code)	28. MILITARY OCCUPATION AND DOT NUMBER
1606 BISTINEAU, DRIVE BOSSIER, LOUISIANA	2533 RADTELEGOPR 957.282 TRANSCORERAD&TV)

29. STATEMENT OF SERVICE		YEARS	MONTHS	DAYS
a. SPECIALTY NUMBERS FOR BASIC PAY PURPOSES	(I) NET SERVICE THIS PERIOD	02	10	06
	(II) OTHER SERVICE	00	00	00
	(III) TOTAL (Items (I) plus (II))	02	10	06
b. TOTAL ACTIVE SERVICE		02	10	06
c. FOREIGN AND OR SEA SERVICE		01	03	20

30. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED

NDSM	11JAN66	VNSM 2★	29JAN68
VNSM 1★	26JUN67	GCMDL	1Apr69
VNCM	12JAN68		

31. EDUCATION AND TRAINING COMPLETED

HIGHSCOL - 12 yrs.
COLLEGE - 3 yrs.

COMMELECSCOLSN SDIEGO	RADTRGORCRS	18WKS	1967
CAMPEN CALIF.	VIETLANGCRS	10WKS	1967
COMMSCOL FMPLANT, CAMLEJ	ANTRC-970PRCRS	04WKS	1969

VA AND EMPLOYMENT SERVICE DATA

32. NON-PAY PERIODS DURING THE LAST (Previous) Two Years	33. DAYS LEAVE PAID	34. INSURANCE IN FORCE (USGLI or USGLI)	35. AMOUNT OF ALLOTMENT	36. MONTH ALLOTMENT DISCONTINUED
NONE	36 days	☐ YES ☐ NO	$ NA	NA

37. VA CLAIM NUMBER	38. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE
C NA	XXXX $10,000 ☐ $5,000 ☐ NONE

REMARKS

39. REMARKS

9940 VIETLANG TRAINED 0-68.31 INTERPRETER

AUTHENTICATION

40. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED	41. DATE CERTIFICATE OR DD FORM 214 ISSUED TO MEMBER (DAY / MONTH / YEAR)
Michael D. McCain	24 / 05 / 71

42. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER	43. SIGNATURE OF PERSON AUTHORIZED TO SIGN
P. G. BOOTMAN, MAJOR, COMMANDING	

DD FORM 214 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE. S/N 0102-501-4301

ARMED FORCES OF THE UNITED STATES
REPORT OF TRANSFER OR DISCHARGE

1

Alt[redacted] Foss
541 45th St.
Hialeah, Florida
305-681-7982

Don Donner and Marti Jordan
902 W. Maple
Fayetteville, Arkansas 72701
501-521-7384

Michael D. McCain

MICHAEL D. McCAIN

Sworn to before me this

7th day of July, 1972

Nancy Stearns

NANCY STEARNS
NOTARY PUBLIC, State of New York
No. 31-3915800
Qualified in New York County
Commission Expires March 30, 1973

Specialty certificate (Specialty Number and Title 2533). Subsequently, in approximately February 1969, I completed a program of training in microwave relay systems (ANTRC-97Operators Course) at Camp Lejeune, North Carolina. This course involved study and operation of equipment comparable to commercial long distance dialing transmission equipment. (This training and certification is reflected on the DD-214N"Report of Transfer or Discharge" attached hereto as Exhibit "A"). In addition, from June 1964 to August 1965, I worked as a pay station maintenance and collect worker for the Southern Bell Telephone Company in Shreveport, Louisianna. In this capacity I had access to the frame (switching and dial systems) and the microwave relay systems (long distance systems). The knowledge, experience and expertise gained from this university and marine training and work form the basis of my belief that the above described interferences encountered while using VVAW telephones are not simple or usual circuit problems but rather the product and effects of electronic bugging equipment attached to some or all of the listed telephones.

A large number of the phone calls in which the above-described interference occurred concerned specific plans for the projected anti-war protest and educational activities of the VVAW at the Democratic and Republican National Convention in Miami. Conversations have been had with the following persons, among others, who have been subpoenaed to appear before the Tallahassee grand jury on July 10, 1972. Those persons are as follows:

John Kniffin and Wayne Beverly
P.O. Box 12986
Austin, Texas
512- 451-2841

Scott Camil and Nancy McCown
P.O. Box 13179
Gainesville, Florida 32601
904-378-0774

(a) These calls have been placed from the National Headquarters in New York City which telephone numbers are (212) 725-5680, 5681,5682, and 5683.

(b) These calls have been placed to VVAW offices in Austin, Texas, tel. (512) 451-2841; in Gainsville, Florida, tel. (904) 378-0774; in Hialeah, Florida tel. (305) 681-7982; and Fayetteville, Arkansas tel. (501) 521-7384.

4. My belief that the above phones are tapped is based on the following occurrences: On numerous occasions since March 1972, while making telephone calls from the New York office, I have heard actual playbacks of prior conversations that I and others in that office have had over those telephones. In addition, I have frequently experienced a two or three second delayed echo of the very conversations in which I was then engaged. Also, when calling other VVAW offices and other telephones which I believe themselves to be subject to illegal taps, I have experienced great difficulty in getting direct and clear connections. Finally, approximately 20% of all long distance calls which I have placed during this period have been so beclouded by interference that connection was impossible.

5. My belief that the above-described interferences were not simple or usuual circuit problems but rather the product and effects of electronic surveillance equipment attached to some or all of the above-listed telephones is based on my knowledge of, and training and experience in electronics and communications systems. In 1962, I took electrical engineering and electronics courses at the Louisianna Polytechnic Institute. Subsequent to this university training, I was trained in San Diego, California by the United States Marine Corps between September 1966 and April 1967 to be a radio-telegraph operator and functioned in that capacity in the Marine Corps from April 1967 to April 1969. The training included courses in basic electronic theory and in scrambling and coding devices. After an eighteen-week course I graduated second in my class and received a Military Occupatio

AFFIDAVIT

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

MICHAEL D. McCAIN, being duly sworn, deposes and says:

1. I am and have been since February 1972 one of six national coordinators comprising the National Coordinating Committee of the Vietnam Veterans Against the War (VVAW). Since March 1972, I have carried out my responsibilities as a national coordinator principally from the National Headquarters of the VVAW located at 25 West 26th Street, New York City.

2. As national coordinator, I am responsible for implementing, coordinating, and facilitating various activities and programs in which VVAW participates, including the planned peaceful anti-war protests scheduled in Miami, Florida during the Democratic and Republican National Conventions. My work in this regar has involved me in frequent telephonic communications with VVAW offices and individual members throughout the country.

3. On information and belief, the telephones of the National Headquarters in New York City and those of the regional offices listed below have been and are the subject of illegal and unconstitutional wiretapping and other unlawful interception by defendants and their agents:

I Scott Camil, am a witness subpoenaed to appear before this Grand Jury.

Since November 1971 I have noticed that while using my telephone (904-378-0774) which is the headquarters for the Fla. region of Vietnam Veterans Against the War, that there have been numerous occasions where conversations were disconnected in the middle, things that had just been said were played back, clicking, times when the phone was dead, all which have happened more times then would be expected even with an insufficient, inadequate phone Company.

In addition, on information and belief, one witness subpoenaed to appear is known by none of the other witnesses, but I have had a conversation with V.V.A.W. people in his home state that I believe to have been about him.

Further at least one question put to me by the Grand Jury appears to concern a conversation I had with one other per on my telephone.

I therefore believe that my telephone is subject to electronic surveillance.

s/ Scott Camil

Witnessed signature
this 13th day of July 1972
s/ Helen A. Roberts, Deputy Clerk

interference on my telephone alsready brought to the attention of this Court in the affidavits of Robert Wayne Beverly, John Kniffin and Nancy Stearns, I believe that my phone is being tapped.

JAMES FRANK HALL

Sworn and subscribed to before me this _____ day of August,

STATE OF FLORIDA
COUNTY OF LEON

JAMES FRANK HALL, being duly sworn, deposes and says:

I am a member of the Vietnam Veterans Against the War and I reside and pay the rent at 1636 Pepper Drive, Tallahass florida. I was one of the persons subpoenaed to appear befor the federal grand jury herein on July 10, 1972.

Since July 9, 1972, the day before the grand jury subpoenas were returnable, my home has been the Tallahassee residence for the majority of the subpoenaed witnesses, including Jack Jennings, Robert Wayne Beverly, William Bruce Horton, and John Chambers. My home has also been used and continues to be used as the VVAW Tallahassee office and as a meeting place for the above-named witnesses and their attorne Throughout the grand jury proceedings those four witnesses have repeatedly used my telephone to talk with their lawyers and others. The lawyers have also used my telephone on a number of occasions in connection with this and other cases.

On July 31, 1972, I received a call from a representativ of the telephone company who said that he wanted to send someone over to work on the wires on the inside and the outsi of the instrument. In the midst of our conversation we were cut off and a male voice came on the line identifying himself as the assistant director of the FBI, Jacksonville, Florida. As best as I could hear, the man, as though giving a report said, "the case I mentioned concerning the strategic air command bombers ... FBI investigation disclosed a property owner ... military aircraft flying ... nearby airbase."

As a result of the interruption of my conversation by what appeared to be an FBI report and as a result of ot

Since my co-counsel and I arrived in Tallahassee to represent witnesses before this grand jury we have talked over the VVAW/Hall phone and the phone where we are staying with reference to our preparation of the cases herein. We have also spoken to our clients at the VVAW house from the phone where we are staying. We believed these phones would give us privacy of communication with our clients and for our clients and that our Fourth Amendment rights and the Sixth Amendments rights of our clients may have been violated and continue to be violated.

---

* The phone number at Mr. Hall's house is 575-2681.

s/ Nancy Stearns

Sworn to before me this 13th day of July 1972

s/ Kent Spriggs
Notary Public State of
Florida at Large.
My Commission Expires
Jan. 24, 1976.

Nancy Stearns being duly sworn deposes and says:

I am one of the counsel in the grand jury hearings pend ing before this Court.

On the evening of July 12, 1972, at approximately 8:30 p.m. I tried to make a telephone call at the home where my co-counsel and I have been staying since we arrived in Tallahas: for this hearing.* I was unable to obtain a dial tone and hear noises on the other end which sounded as though I was connected to another phone which was off the hook. I repeatedly tried to get a dial tone. The noises grew loud and then I heard a male voice. I asked who was there and the man answered "hello, I just picked up the phone." The man then identified himself as Wayne Beverly, one of the subpoenaed witnesses herein. I then asked if the telephone had been off the hook and Mr. Beverly reiterated that it had not been.

Approximately five minutes before one of my co-counsel Judy Peterson had been talking on the phone with the VVAW house (the home of subpoenaed witness James Frank Hall who's subpoena has been dismissed where Wayne Beverly was staying) and had hun up the phone.*

It appears that not only did the phones not disconnect then they were hung up, but that even when the Hall phone was hung up I could hear noises through it, which were emanating from the house as though the phone was a transmitter.

On information and belief the interference on the tel phone was due to electronic surveillance of either the phone o the VVAW house or the house in which my co-counsel and I have been staying or both.

---

* That telephone number is 385-2343.

any further surveillance.

3. Award damages against each of the defendants in the sum of $25,000 compensatory damages and $25,000 exemplary damages for each of the plaintiffs.

4. Award damages against defendant United States of America in the sum of $10,000 compensatory and exemplary damages.

5. Award other and further relief as this Court may deem just and proper, together with costs, disbursements and reasonable attorneys' fees in connection with this action.

Respectfully submitted,

Doris Peterson
James Reif
Nancy Stearns
Morton Stavis
c/o Center for Constitutional Right
588 Ninth Avenue
New York, New York 10036

Cameron Cunningham
Brady S. Coleman
502 West Fifteenth Street
Austin, Texas 78701

Larry Turner
P. O. Box 1251
Gainesville, Florida 32601

Jack Levine
1427 Walnut Street
Philadelphia, Pennsylvania 19102

Attorneys for Plaintiffs

Dated: New York, N.Y.
February 7, 1973

44. On information and belief, during plaintiffs' detention in Tallahassee, Florida, defendants violated their rights under the Fifth and Sixth Amendments, and further evidenced their bad faith by placing in plaintiffs' midst during attorney-client consultations agents of state and federal law enforcement agencies. This action by defendants was done in such a manner as to directly invade plaintiffs' efforts to consult privately with counsel.

SIXTH CAUSE OF ACTION
First, Fifth and Ninth Amendments

45. Plaintiffs repeat and reallege all of the allegations in paragraphs 1-44 of this complaint.

46. On information and belief, all of the aforesaid actions by defendants and their agents were taken in bad faith in an effort to discourage and deter membership in plaintiff VVAW and to destroy the organization in violation of the First, Fifth and Ninth Amendments to the Constitution.

WHEREFORE, plaintiffs request that this Court:

1. Enter a declaratory judgment that plaintiffs were subpoenaed to and detained in Tallahassee, Florida, from July 1972 to July 12 and 13, 1972, in violation of their rights und the First, Fourth, Fifth, Sixth, Eighth and Ninth Amendments t the United States Constitution.

2. Enter a declaratory judgment that the electronic surveillance of plaintiffs was in violation of their rights ur the Fourth and Ninth Amendments and in violation of 18 U.S.C. §§ 2510-2520 and 47 U.S.C. § 605; and issue an injunction aga

Wayne Beverly, Scott Camil, John Kniffin, and Nancy Stearns, the originals of which are filed in this Court in the case of In re Grand Jury Proceedings of Jack Jennings, et al., T Misc. 1/122 (N.D.Fla.), copies of which are annexed hereto and made a part hereof.

39. Upon information and belief, the service of the grand jury subpoenas on plaintiff John Kniffin and other plaintiffs was the result of unconstitutional and illegal electronic surveillance by defendants.

40. On information and belief, throughout the grand jury hearings and for the months immediately thereafter, defendants conducted illegal and unconstitutional surveillance of the home of plaintiff James Frank Hall which also served as the Tallahassee VVAW office and the residence of the other plaintiffs during the grand jury proceedings. See Affidavits of James Frank Hall, Wayne Beverly, Nancy Stearns and John Kniffin, referred to in paragraph 38 and annexed hereto and made a part hereof.

41 On information and belief, there was no court order authorizing electronic surveillance of plaintiffs.

42. The aforementioned electronic surveillance by defendants or their agents is in violation of plaintiffs' right under the First, Fourth and Ninth Amendments and under 18 U.S.C §§2510-2520 and 47 U.S.C. § 605.

FIFTH CAUSE OF ACTION
Fifth and Sixth Amendments

43. Plaintiffs repeat and reallege all of the allegations in paragraphs 1-42 of this complaint.

anti-war demonstrations in Miami, Florida. On information and belief, this round-up and detention of plaintiffs was even opposed by local police officials.

THIRD CAUSE OF ACTION
Conspiracy Allegations

35. Plaintiffs repeat and reallege the allegations in paragraphs 1-34 of this complaint.

36. On information and belief defendants and their agents whose names are unknown to plaintiffs conspired together to issue the aforesaid subpoenas and serve or cause them to be served upon plaintiffs in order to detain plaintiffs in Tallahassee in violation of their constitutional rights. These actions did in fact deprive plaintiffs of their protected rights. Defendants' use of the subpoenas herein under color of law was unrelated to any legitimate purpose, was malicious, beyond the scope of their authority, and not in furtherance of any legitimate duty.

FOURTH CAUSE OF ACTION
First, Fourth and Ninth Amendments, 17 U.S.C. §§2510-20 and 47 U.S.C. §605

37. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-36 of this complaint.

38. Upon information and belief the grand jury subpoenas issued to plaintiffs by defendants were composed on the basis of illegal and unconstitutional surveillance of plaintiffs' their homes and organizational offices by defendants or their agents. See Affidavits of Michael McCain, James Frank Hall,

lation of the First Amendment in that:

a) they were issued in bad faith and not for the purpose of obtaining testimony from plaintiffs;

b) they constituted a prior restraint on plaintiffs' exercise of their rights under the First Amendment to engage in lawful and protected activity during the Democratic National Convention;

c) they were designed and intended to prevent, chill, and deter plaintiffs and the class they represent from speaking out against the illegal and unconstitutional war in Indochina;

d) irrespective of their intended effect, the grand jury subpoenas complained of herein had the practical effect of preventing plaintiffs and others from engaging in protected First Amendment activities at the Democratic National Convention and from speaking out against the illegal and unconstitutional war in Indochina.

SECOND CAUSE OF ACTION
Fifth and Eighth Amendments

33. Plaintiffs repeat and reallege the allegations in paragraphs 1-32 of this complaint.

34. The subpoenas, which were served by defendants to compel plaintiffs to appear before the grand jury herein, conver the grand jury into an instrument of preventive detention in th they detained plaintiffs without lawful justification in Tallahassee, Florida, at the time when plaintiffs intended and had t right to participate in long planned constitutionally protected

On information and belief, at the time said plaintiffs were subpoenaed defendants planned to seek indictments against them. Therefore, said subpoenas were issued by defendants in bad faith and to harass said plaintiffs.

28. Plaintiffs Camil and Mahoney were asked questions by defendants and were later indicted by the grand jury. On information and belief, defendants were seeking indictments against plaintiffs Camil and Mahoney at the very time they questioned them before the grand jury. Such questioning was in bad faith and designed to harass said plaintiffs and to make them appear suspect and serve as an improper basis for indictment.

29. Because plaintiffs were detained in Tallahassee, they were unable to participate in any of the anti-war demonstrations and educational activities conducted by the Vietnam Veterans Against the War.

30. On information and belief, the subpoenas herein were issued not by the grand jury or at their request but rather were issued in bad faith by defendants as part of their plan to prevent plaintiffs from participating in anti-war demonstrations at the Democratic National Convention.

FIRST CAUSE OF ACTION
First Amendment

31. Plaintiffs repeat and reallege the allegations in Paragraphs 1-30 of this complaint.

32. The subpoenas served by defendants and their agents upon plaintiffs and other members of plaintiff VVAW are in vio

above-mentioned organizational activities of which the defendants were already aware.

23. These subpoenas were deliberately served to coincid with the opening of the Democratic National Convention and the planned VVAW activities already described, and were intended to prevent, chill, and deter plaintiffs and members of their class from engaging in these lawful activities.

24. Plaintiffs Jones, Hall and McCown were held in Tallahassee, Florida, under subpoena through July 12, 1972, and then released from their subpoenas. Plaintiffs Camil, Logston, Michelson, Kniffin, Foss, Purdue, and Mahoney, were held through July 13, 1972, and then released from their subpoenas. These plaintiffs were detained in Tallahassee despite the fact that defendants did not need their testimony in order to bring an indictment against certain of the plaintiffs.

25. Despite the fact that plaintiffs McCown, Logston, Kniffin, Michelson, Purdue, Jones and Foss were detained in Tallahassee throughout the Democratic National Convention, alleged because their testimony was necessary for the grand jury, they were asked no questions other than those of personal identificat

26. Plaintiff Hudgins was served with the complained c subpoena on Monday evening, July 10, 1972, given approximately twelve hours in which to appear in Tallahassee, and then held there throughout the Democratic National Convention without bein asked any questions, and released on July 12.

27. Plaintiffs Kniffin, Purdue, Foss and Michelson we held without questioning and later indicted by the grand jury.

g) July 11, evening - VVAW seminar on bombings of Indochina, including latest photos and NARMIC slide show.

h) July 12, morning - VVAW seminar on racism.

i) July 12, afternoon - VVAW seminar on repressio

j) July 13 - VVAW march to convention site.

21. From the outset of the plans for the actions, the plaintiffs were in constant contact with the Miami Beach Police Department and continually apprised them of their plans and acti vities. The first major public action the plaintiffs sponsored was a peaceful march on July 10, in the evening of the first da of the Democratic National Convention. Plaintiffs obtained parade permits from the Miami Beach Police Department.

22. On Friday, July 7, starting at or about 12:00 noo in excess of twenty (20) grand jury subpoenas, most of which bo dates of issuance four days earlier, were served upon the named plaintiffs and other members of plaintiff organization in a coordinated sweep. These subpoenas were made returnable sixty-nine (69) or less hours later in Tallahassee, Florida, at 9:30 A.M. (with a weekend intervening). They were served not only those of the plaintiffs who live or had arrived in Florida, bu also on VVAW members in the states of Arkansas, Texas and Loui ana. All the subpoenas were returnable at the same time, notw standing the obvious impossibility of the grand jury hearing t testimony all at once; or, indeed, the apparent lack of necess that said testimony be taken during the same time as the

they increased their educational programs and activity to meet the American government's escalation of its policies in Indochin As part of their coordinated effort to make this education as comprehensive and complete as possible, plaintiffs held a conference on May 27, 1972, in Gainesville, Florida to better coord nate their educational activities at the Democratic and Republic National Conventions. A person who later identified himself to be in the employment of the defendants was present and participated in that meeting. In late June the planned educational programs and activities were announced publicly and appeared in the Miami press, and sent out across the country.

20. Plaintiffs planned and announced the following edu cational activities for the week of the Democratic Convention:

a) July 8 - VVAW, in conjunction with the Nationa Tenants Organization,will hold a rally.

b) July 9 - Southern Christian Leadership Conference will open Resurrection City and hold a rally in which VVAW member will participate.

c) July 10 - VVAW and National Welfare Rights Organization will hold a rally and march to the convention site.

d) July 11-12 - VVAW will hold guerilla theater and meet with Democratic Party Delegates.

e) July 11, morning - VVAW seminar on drugs.

f) July 11, afternoon - VVAW seminar on VA hospitals.

Mahoney are veterans of this nation's armed forces and have served in the war in Vietnam. They are also members of the VVAW.

17. Plaintiffs are amongst the regional and national leadership group in the VVAW and most of them participated in the planning of the official VVAW educational actions scheduled in Miami during the Democratic and Republican National Convention in July and August, 1972, including but not limited to consultation with local law enforcement and elected officials concerning the issuance of parade permits, the procedures to be utilized in First Amendment protected marches and demonstrations, and the like.

18. The organizational activities themselves were to begin and did begin on July 8, 1972, one day after the service o the grand jury subpoenas which are the subject of the instant lawsuit. They were intended to focus the attention of the American public, including those present at the two conventions, upon what plaintiffs believed and still believe to be the illegal and unconstitutional acts of the American government in Indochin

19. The decision to engage in such activities was initially made on April 11, 1972, and was announced in a press conference in Houston, Texas, on April 12, 1972, receiving national coverage. In response to the apparent renewed escalation of the war, including the bombing of North Vietnam, the increase in troop movements, the mining of the ports and rivers of North Vietnam, and ultimately the bombing of river dikes in the Red River Valley in which 12-15 million Vietnamese people are living, plaintiffs felt that it was extremely urgent to present their information to the National Party Conventions. Consequent

12. At the time of the service of the complained of subpoenas, plaintiffs BRUCE HORTON, ALTON FOSS, DONALD PURDUE, and WAYNE BEVERLY were VVAW members who were active in preparing, or planning to attend, VVAW Democratic Convention activities.

13. At the time of the service of the complained of subpoenas, plaintiffs JAMES FRANK HALL, TIMOTHY JONES, RICHARD HUDGINS, and PETER P. MAHONEY were all members of VVAW.

Defendants

14. Defendant RICHARD KLEINDIENST is Attorney General of the United States; defendant L. PATRICK GRAY is Acting Direct of the Federal Bureau of Investigation; defendant WILLIAM H. STAFFORD, JR., is United States Attorney for the Northern Distri of Florida; defendants GUY GOODWIN and STARK KING are attorneys for the Internal Security Division of the United States Departme of Justice; and JOHN DOE and RICHARD ROE are agents of the above defendants whose identities are presently unknown to plaintiffs.

All defendants are sued both individually and in their official capacities.

Defendant United States of America.

STATEMENT OF FACTS AND CIRCUMSTANCES

15. This is an action for declaratory and injunctive relief to challenge the constitutionality of grand jury subpoena issued by defendants, requiring plaintiffs to appear on July 10 1972, in Tallahassee, Florida.

16. Plaintiffs Camil, Jordan, Logston, Michelson, Don Kniffin, Horton, Foss, Purdue, Beverly, Hall, Jones, Hudgins, a

6. At the time of the service of the complained of subpoena, plaintiff NANCY McCOWN was a student at Santa Fe Junior College and a resident of Gainesville, Florida. She was a staff worker for VVAW and was active in planning the above-mentioned Convention activities.

7. At the time of the service of the complained of subpoena, plaintiff MARTIN JORDAN was a resident of the State of Arkansas, Regional Coordinator for VVAW in that state, and coordinator of VVAW Convention activities for VVAW members from his region.

8. At the time of the service of the complained of subpoena, plaintiff BRUCE LOGSTON was a resident of Gainesville, Florida, and a member of the VVAW Executive Committee at the University of Florida.

9. At the time of the service of the complained of subpoena, plaintiff STANLEY MICHELSON, JR., was International Liaspn Coordinator for VVAW, and was active in planning VVAW activities in Miami for the Democratic Convention.

10. At the time of the service of the complained of subpoena, plaintiff DONALD DONNER was a resident of the State o: Arkansas, a member of VVAW and was active in planning VVAW Democratic Convention activities.

11. At the time of the service of the complained of subpoena, plaintiff JOHN W. KNIFFIN was a resident of the State of Texas, Texas Regional Coordinator for VVAW, and coordinator o the activities of Texas VVAW members in connection with the Democratic Convention.

2. The amount in controversy exceeds $10,000 exclusive of interests and costs, in that the value of each of the rights of which plaintiffs have been deprived is in excess of $10,000.

3. Plaintiffs' causes of action arise under the First, Fourth, Fifth, Sixth, Eighth and Ninth Amendments to the Constitution of the United States; 28 U.S.C. §§ 2201-02; 18 U.S.C. §§ 2510-20; and 47 U.S.C. § 605; and 42 U.S.C. §§ 1983, 1985(3) and 1988.

PARTIES

Plaintiffs

4. The VIETNAM VETERANS AGAINST THE WAR (hereinafter VVAW) is a membership organization whose purposes include the following:

a) to contribute toward ending the war in Vietnam and Southeast Asia by developing the abilities of its members to collect and disseminate information to the public;

b) to encourage all responsible efforts not in violation of 50 U.S.C. §§ 1522 and 1523 to effect peace in Southeas Asia through the knowledge and experience of the membership;

c) to aid and assist veterans; and

d) to participate in activities relating to issues of veterans' rights.

5. At the time of the service of the complained of subpoena, plaintiff SCOTT CAMIL was a resident of Gainesville, Florida, and Florida Regional Coordinator of VVAW. He was activ in planning VVAW activities for the Democratic National Conventi in Miami.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

VIETNAM VETERANS AGAINST THE WAR, SCOTT CAMIL, NANCY McCOWN, MARTIN JORDAN, BRUCE LOGSTON, STANLEY MICHELSON, JR., DONALD DONNER, JOHN W. KNIFFIN, BRUCE HORTON, ALTON FOSS, DONALD PURDUE, WAYNE BEVERLY, JAMES FRANK HALL, TIMOTHY JONES, RICHARD HUDGINS and PETER P. MAHONEY, Plaintiffs v. RICHARD KLEINDIENST, individually and as Attorney General of the United States; L. PATRICK GRAY, individually and as Director of the Federal Bureau of Investigation; WILLIAM H. STAFFORD, JR., individually and as United States Attorney for the Northern District of Florida; GUY GOODWIN and STARK KING, individually and as Attorneys for the Department of Justice, Division of Internal Security; JOHN DOE and RICHARD ROE, individually and as Agents of defendants KLEINDIENST, GRAY, and STAFFORD, including but not limited to agents of the Federal Bureau of Investigation; UNITED STATES OF AMERICA, Defendants	Civil Action No. TCA 1843

AMENDED COMPLAINT

Plaintiffs, for their verified complaint, say and allege

JURISDICTION

1. The jurisdiction of this Court arises under 28 U.S.C §§ 1331, 1343(4), 1346, 1651, 2201 and 2202.