

10-11-1962

Uncle Leland to "Jim" (11 October 1962)

Uncle Leland

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Incomplete address

Fargo, N. Dak.,

Oct. 11, 1962.

Dear Jim:

Each day I have thought of you and your lovely wife and wondered how you were making out during these times of storm and stress.

It is probably better that it should be you, probably the most diplomatic member of the clan, who was present rather than I who was born unto trouble as the sparks fly upward.

I certainly ^{hope} the good people of the Southland will remember this when election time comes.

It is about the only effective manner in which to register indignation over the unconstitutional thing which was done.

I wired Bob Kennedy, "Keep troops out of Mississippi; send them to Cuba." So did 4 of

my friends.

Had Meridith been a young man of "school age" seeking education in some branch which he could not secure elsewhere he might have had more sympathy in the North which has little conception of the problem the South faces.

Except for the fanatics, however, I think most people recognized him as a trouble-maker helping neither a solution of a thorny problem or the well-being of his race.

I don't know just what I would do if I were a fellow student but I fear it might not be a wise thing.

It (the situation) is certainly anything but conducive to a good quiet contemplative scholastic climate.

I imagine you are too busy to write. Our affectionate regards to your good wife,

Uncle Leland

David Lawrence

WASHINGTON—THE AVERAGE MAN, who doesn't take the time to read the fine print or to analyze the legal questions involved in public controversies, probably thinks that a President of the United States has the inherent right to send troops to sovereign states to establish "law and order" and obedience to court decrees. It may come as a surprise to the average man, therefore, to note that the Constitution does not vest in the President but in Congress alone the power "to provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions."



The Constitution also says that the federal government shall protect each of the states "against domestic violence," but only "on application of the legislature, or of the (state) executive, when the legislature cannot be convened."

Thus, it is necessary to take a careful look at any laws that Congress has actually passed authorizing the use of armed forces in certain contingencies involving law enforcement.

* * *

THESE STATUTES ARE THE SAME ones that existed in 1957 when President Eisenhower sent troops to Little Rock, Arkansas, to maintain order and to secure the enforcement of a federal court decree. He was criticized then, just as President Kennedy is being criticized today, for acting without express authority.

As this correspondent pointed out at the time of the Little Rock affair, Congress had never provided for the kind of situation then occurring. Neither is there today any law on the statute books or any court decision to cover the circumstances — involving federal troops — that have developed in Mississippi.

Theoretically, U.S. Marshals were used in Mississippi as civilians. But actually they were backed up by military forces in a situation of domestic violence within a state. In due time arrests could have been made by the marshals for any interference with the court decree itself requiring the admission of James Meredith to the University. But they had no authority to punish violations of state law or to suppress violence. This is solely within the jurisdiction of the state.

* * *

WHERE IS THE LAW, MOREOVER, that authorizes marshals and troops to escort Meredith around the campus and proved "protection" for him for the full year and a half he will be at the university, as U.S. officials promise will be done? Isn't this really an obligation of the state of Mississippi?

Congress has authorized use of federal

troops to enforce federal statutes, but this does not include court decrees. The Constitution speaks of the use of troops only to enforce federal laws. There is no mention of court decisions or court decrees. The President is obliged to execute federal laws, but there has been no Act of Congress ordering desegregation of public schools. The whole controversy has grown out of a court decision, but troops cannot be legally used to enforce it.

* * *

PERHAPS THE MOST COMPREHENSIVE study of this whole legal problem has been made by Alfred J. Scheppe of Seattle, who has often been chairman of important committees of the American Bar Association. He wrote for the "American Bar Association Journal" in February 1958 an article which covers exactly the same points in reference to the Little Rock episode as are being made today in the criticisms of what happened in Mississippi. It is significant that President Kennedy in his executive order sending armed forces to Mississippi used exactly the same language and citations of federal statutes as did President Eisenhower.

Scheppe's article was placed in the "Congressional Record" of September 26, 1962, by Senator Eastland, chairman of the Senate Judiciary committee. Scheppe wrote in his final paragraph:

"Hence, whatever excursion is taken through the Constitution and the applicable statutes, one ends with the conclusion that, as of now, the President has no lawful power to use military force to carry out federal court decrees rendered under Article 3 of the Constitution (judicial power provisions)."

* * *

ALREADY SOME DOUBTS ARE BEING expressed by champions of integration, too. Thus, the Washington "Post," long a leader in the fight against segregation, said in an editorial that perhaps it would have been wiser to declare martial law — which, of course, the department of justice insists it didn't do. The editorial adds:

"It is disquieting, in any case, to learn that, without any declaration of martial law, soldiers are in some instances acting without regard to procedures established by law. The army was sent into Mississippi expressly to re-establish respect for the Constitution. Its mission can only be corrupted if it behaves in unconstitutional ways."

But the average man may say: "What difference does it make? The purpose is all right anyhow." For centuries some people have said that "the end justifies the means." Yet that's how "police states" are born, and that's the real reason Moscow is exulting today. For in the Soviet Union there's plenty of racial discrimination, but what the Soviets see now in America is a vindication of their practice of using military means to enforce the edicts of the Kremlin.