

GOVERNOR EDISON RECEIVED THE FOLLOWING REPORT FROM THE WELFARE COMMISSION ON THE CONDITION OF THE URBAN COLORED POPULATION IN RE INVESTIGATION INTO VIOLATION OF CIVIL LIBERTIES OF CERTAIN RESIDENTS OF HUDSON COUNTY.

New Jersey Commission on the Urban Colored Population

To His Excellency Charles Edison, Governor of the State of New Jersey:

We, the undersigned, counsel for the above Commission, having been duly authorized and requested by the Commission to investigate and report on its behalf into alleged violations of civil liberties of certain persons held as material witnesses in the Hudson County Jail, pursuant to your direction given to said Commission under date of November 2, 1942, do hereby respectfully report as follows:

We ascertained that a hearing was to be held upon a writ of habeas corpus issued by Honorable Guy L. Fake, Judge of the United States District Court for the District of New Jersey, on November 4, 1942, at two P.M., at the United States District Court Room in the Federal Building, Newark, New Jersey. This said habeas corpus proceeding had been instituted by Donald Crighton, Esquire, Counsel for the National Association for the Advancement of Colored People, seeking the release of eleven persons incarcerated in the Hudson County Jail. The matter was argued before Judge Fake by Arthur Garfield Hays, Esquire, on behalf of said Association. We attended said hearing armed with subpoena which we intended to serve upon these persons in the event that they were discharged by Judge Fake pursuant to said writ of habeas corpus. It was our purpose to obtain their testimony first-hand concerning the alleged violation of their civil rights.

Immediately prior to the hearing we conferred with Judge Fake in Chambers and pointed out the purpose of our presence there. We asked that in the event the application should be successful that some opportunity to be given to us to effect service of the subpoenas upon the individuals involved. Judge Fake informed us that at some point in the proceeding he would recognize us, but that he preferred that he be given an opportunity to see how the hearing progressed. After hearing a portion of the argument, Judge Fake recessed the court and requested that we attend him in his Chambers, with counsel for the State and for the individuals involved, which was done. Judge Fake, in the presence of counsel and ourselves, stated that he preferred that no effort be made to subpoena the individuals who were before him on the writ of habeas corpus which he had granted. We yielded to his ruling; and thereafter the court reconvened; and after further argument, Judge Fake held that in his opinion the State Court could grant the same relief which was sought in his court, and that it was not the province of the Federal Court to interfere with the administration of justice by the State Courts. He acknowledged concurrent jurisdiction, but stated it to be the policy of the Federal Courts not to exercise that jurisdiction until all remedies in the State Courts had been exhausted.

The writ of habeas corpus was dismissed by Judge Fake, without prejudice to the right of the individuals to seek appropriate relief in the State Courts. The prisoners were remanded to the custody of the Sheriff of Hudson County, and were thereupon returned to the Hudson County Jail.

Immediately thereafter we endeavored to obtain the transcript of the testimony taken in the matter of State vs. James J. Donovan, et als, which is a proceeding presently pending in the New Jersey Supreme Court upon a writ of certiorari granted by Justice Clarence E. Case upon the application of the defendants in that cause to quash the indictments brought against them. We deemed that it was necessary to obtain this transcript for the reason that it was stated in open court before Judge Fake, by counsel, without denial, that the persons who are allegedly illegally detained had been held incommunicado since June 6, 1942. Believing that the record in this proceeding contained all of these essential facts necessary to complete this investigation, we communicated with Donegan and Kabot, the official court stenographers in that proceeding, but were unsuccessful in obtaining the transcript from that source within time.

We thereupon communicated with John Drewen, Esquire, the Supreme Court Commissioner designated to conduct the hearings in said proceedings and we conferred with him concerning the matter. Our discussion of the matter with him, however, was of enforced brevity due to the fact he had an appointment at Trenton which made it impossible for him to review the matter thoroughly with us. He expressed his willingness and desire to cooperate with us to the fullest possible extent, and he made available to us the transcript of the testimony in the proceedings.

PROPERTY OF
NEW JERSEY STATE LIBRARY

OCT 10 1968

185 W. State Street
Trenton, N.J.

974.90
C5815
1942

974.90

copy 2

We proceeded to examine and analyze the pertinent testimony, a copy of which is submitted herewith and made a part of this report. This testimony discloses glaring and flagrant violations of constitutional rights and invasions of personal liberty. We recommend that all of the testimony be read, but for your convenience we will attempt to summarize briefly the salient points.

Beatrice Douglas (colored) (pages 1601-1616) started her testimony by making a pitiful request that "I want Flanagan to tell me something. This reference to Flanagan in quotes is intended to designate Patrick W. Flanagan, who is Chief of the Investigators for the Prosecutor of Hudson County, and who was the person in charge of all matters pertaining to the vice raids in the City of Bayonne. This witness testified that she was arrested as a material witness on June 5, 1942, and held in bail in the amount of \$5,000 by Judge Thomas H. Brown of the Hudson County Court of Quarter Sessions. She has been held in jail ever since that date and has not been permitted to see anyone, and only recently has she been permitted to receive mail. When she was arrested Chief Flanagan compelled her to dump the contents of her pocket-book on the table, which he examined, apparently without any search warrant, authorizing this action on his part. When she was brought to the Hudson County Jail she was fingerprinted and was there confronted by two colored men who claimed that they had committed prostitution with her, but she vehemently denied this accusation. The purpose of this accusation made by the men in the presence, and apparently at the instigation, of Chief Flanagan, was to intimidate her. Chief Flanagan threatened her with a charge of prostitution unless she gave a statement. She testified she was arrested on the night of June 5 and was not given any food until two o'clock of the following day.

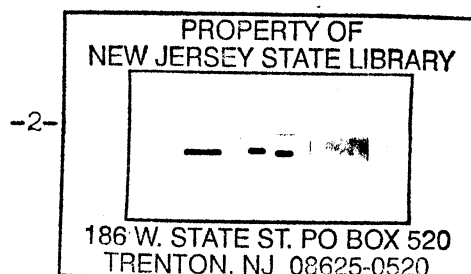
Virginia Moseley (colored) (pages 1629-1632) testified she was arrested on the night of June 5 as a material witness and held in bail of \$5,000. She similarly was threatened by Chief Flanagan with a charge of prostitution unless she gave him a statement. She has been confined in the Hudson County Jail since the date of her arrest, and she was also fingerprinted.

Cora Gethers (colored) (pages 1633-1640) testified that she was arrested on June 9, 1942, by two colored men and two white men who accosted her at her home in Bayonne and asked her name. When she gave her name they told her she was under arrest, and did not give her any opportunity to change her house slippers for shoes. She has three children; and her husband, Fred Gethers, testified that he was unable to see his wife at the Hudson County Jail ever since the date of her incarceration, although he made numerous attempts to do so. She is being held as a material witness. Although this witness testified that her bail was fixed at \$5,000, there is no court record of bail being fixed in any amount. She was similarly threatened with a charge of prostitution unless she gave Chief Flanagan a statement. Chief Flanagan told her, "I would like to slap you in a place on bread and water for six months," when she refused to admit having had relations with the two men with whom she was confronted.

Sarah Cox (colored) (pages 1640-1646) was arrested on the night of June 5, 1942, and has been confined in the Hudson County Jail ever since that date, under bail of \$5,000, as a material witness. She has been held incommunicado during all of this time, and was coerced into giving a statement to Chief Flanagan under a threat made by him that he would charge her with prostitution if she would refuse to make such a statement.

Ethel Redd (colored) (pages 1654-1659) testified she was arrested on the night of June 5, 1942, and has been held in the Hudson County Jail as a material witness ever since that date under bail of \$5,000. Chief Flanagan threatened to make a charge of prostitution against her unless she gave a statement. Her only visitor at the jail was her husband, who is a soldier in the Army, who was permitted to see her on one occasion in August 1942, after she had given the statement to Chief Flanagan.

Nettie Johnson (colored) (pages 1659-1667) testified that on the night of June 5, 1942, she was on her sister-in-law's steps next door to Doc's Amber Grill at the time of the raid. She was arrested and brought



into the tavern and, together with the other persons arrested, she was brought to the Hudson County Jail where she was fingerprinted and placed under bail of \$5,000 as a material witness.

Ellen Carroll (white) (pages 1667-1675) testified that she was arrested on June 10, 1942, while she was employed taking care of a sick woman. There is no record of any bail fixed for this witness, although she testified that she was being held as a material witness in bail of \$5,000. She did not give any statement to Chief Flanagan until July 6, she having refused previously to give any statement.

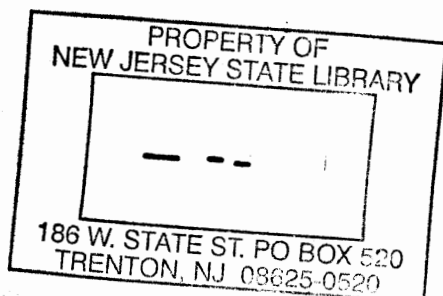
Idaline Rivers (colored) (pages 1675-1680) testified that she was arrested on the night of June 5, 1942, and has been held in the Hudson County Jail as a material witness ever since that date under bail of \$5,000. Chief Flanagan threatened to file a charge of prostitution against her unless she gave a statement.

Clara Turner (colored) (pages 1680-1687) testified that she was standing on a street corner near Alex's Bar and Grill when she was arrested and brought into the premises on June 5, 1942. She was brought to the Hudson County Jail with the other persons arrested at that time and is being held as a material witness in bail of \$5,000.

Eleanor Adkins (colored) (pages 1687-1693) testified that she was arrested on June 5, 1942, and is being held as a material witness in the Hudson County Jail under bail of \$5,000.

George Smith (colored) (pages 1693-1697) testified he was the father of Eleanor Adkins and was arrested at the same time and place with his daughter. He is being held as a material witness in the Hudson County Jail under bail of \$5,000, notwithstanding the fact that he refused to give any statement to Chief Flanagan. No explanation appears in the record why this witness is being held, except his own statement, "I was held on account of my daughter". It is obvious that this man cannot be used as a material witness, because he definitely stated that in his opinion there was nothing wrong with Tony's Tavern and that he would not make any trouble for anybody by making any false statements.

- 3 -



Helen de Werth (white) (pages 1297-1444 and 1464-1550). This witness is presently confined in the New Jersey Reformatory for Women at Clinton, New Jersey, upon a conviction of perjury. A reading of this testimony discloses a flagrant violation of her constitutional rights and a gross miscarriage of justice. It is difficult to summarize her dramatic testimony because it is replete with detail concerning her illegal incarceration.

The witness was an actress and a member in good standing of the National Variety Artists, which is a well known theatrical organization, internationally recognized. The president of the Association testified in the proceedings concerning her good character and her extensive and worthy activities in the Association.

She made a statement for Chief Flanagan under circumstances which she explained in great detail, and which in our opinion completely justified her in that regard. The statement was not actually hers, according to her testimony, but was that of Chief Flanagan and his assistant, Lieutenant Smith. She signed the statement without reading it, because it was so revolting and "full of lies," because she wanted to get out of Flanagan's clutches and into a court of law where she could tell the judge exactly what happened. When she repudiated her statement at the trial of the case before Judge Thomas H. Brown, she was immediately charged with perjury, although the statement which she signed for Chief Flanagan was not under oath. There is nothing in the record to show that any investigation was made by anyone concerning the truth of the matters disclosed by her on the witness stand.

And her testimony discloses that she was not only without counsel, but that when she requested counsel she was advised by the county authorities that no counsel was necessary. She pleaded not guilty to the indictment for perjury and was remanded to the Hudson County Jail for trial. Upon being so remanded to the same jail which she tried so desperately to leave by making the statement, she was frantic; and without the advice of counsel, which she requested of Acting Warden Tattem, she attempted to plead "non vult" to the indictment, but Judge Brown refused to accept her plea and insisted that she plead "guilty" to the offense. She said that she was under the impression that if she pleaded guilty to the indictment for perjury that she would receive a light sentence of perhaps three months in some other jail, and would thus be able to get out of the Hudson County Jail. Instead of that, Judge Brown sentenced her to from two to three years on her plea of guilty.

Joseph E. Kelly (pages 1698-1735 and 1763-1768) testified that he was the Clerk in Judge Thomas H. Brown's court, and had been for a period of approximately nine years. He produced his records which indicate that in none of the foregoing cases was there any written order by Judge Brown fixing bail, but that he verbally ordered bail in the amount of \$5,000 upon the bare recommendation by Assistant Prosecutor Raymond J. Otis that the witnesses were material and that such bail was requested.

In the cases of Cora Gethers and Ellen Carroll there is no record of any bail being fixed, either orally or in writing. He also testified that all of the foregoing witnesses were committed to the Hudson County Jail as material witnesses by Judge Brown on June 9, and that at the request of the Prosecutor's office the commitments were dated back to June 6. His records also indicated that Ellen Carroll was ordered committed before she was arrested, but the entry in the Clerk's minute book under date of June 9, 1942, was scratched out by him. He was unable to explain how he knew anything about Ellen Carroll as a material witness or how he happened to have her name as a material witness to be committed on June 9.

Raymond J. Otis (pages 1739-1746) testified that he was the Assistant Prosecutor of the Pleas of Hudson County who was present at the arraignment of the defendants and material witnesses before Judge Brown on June 9, 1942. He testified that no evidence was produced as to the materiality of the witnesses, nor was there any hearing, nor were any of the material witnesses represented by counsel. He testified that he recommended to the Court that bail be fixed for the defendants in the amount of \$10,000 and for the material witnesses in the amount of \$5,000, whereupon Judge Brown granted the Prosecutor's request, apparently without making any investigation whatsoever into the necessity for holding the material witnesses to bail in the amount of \$5,000 or for any other amount. In passing, we invite your Excellency's attention to the testimony of Lillian Kryscenko (white) (pages 1585-1601 and 1616-1629). This girl is not presently confined in the Hudson County Jail, but her testimony demonstrates the unlawful and improper conduct on the part

of the prosecuting authorities of the County of Hudson. She was arrested on December 27, 1941, and held as a material witness in bail of \$200 fixed by Judge Ormsby. This bail was posted by her brother and she was released from jail on December 30, 1941, after having refused to give any statement or make any admissions of wrongdoing.

She was served with a Grand Jury subpoena to testify before the Grand Jury on February 3, 1942. Instead of testifying before the Grand Jury, she and some other witnesses who were similarly subpoenaed, were herded together and placed in the Hudson County Jail under bail of \$5,000 fixed by Judge Brown, as a material witness. While in the jail she was subjected to many indignities and, in fact, she was placed in a cell with a murderess. She was compelled to defend herself from bodily injury while in the cell with this murderess. She refused to give any statements to Flanagan, but she was, nevertheless, held in jail until March 10, 1942, when she was released. Her aged mother was entirely dependent upon her for support; and during her incarceration her mother appealed to the Prosecutor of Hudson County to release her daughter because she was being dispossessed for non-payment of rent and was literally starving for lack of food. The only action taken by the Prosecutor was to issue an order on the Poor Master to give Mrs. Kryscenko relief. It is difficult to imagine a more appalling abuse of process than is here indicated.

The record further discloses that these material witnesses were not confined in a separate place in the Hudson County Jail, but were in ordinary cell blocks with other persons charged with crime. The record discloses that these witnesses were given ordinary prison fare. It further shows that these witnesses are being held incommunicado, for the most part, and with but few exceptions have been unable to communicate with or see members of their families. They have unquestionably been restricted in their liberties beyond the point necessary for their detention, and have not been accorded the privileges given to persons who are actually charged with having committed crimes.

Furthermore, the crime for which these persons are being held as material witnesses, is simply that of allegedly keeping a disorderly house, which is a misdemeanor under the laws of the State of New Jersey.

CONCLUSIONS

1. The witnesses are being held without any lawful authority. The only affirmative statutory authority for holding material witnesses to bail is that set forth in R.S. 2: 187-18, which is as follows:

"Every judge of the court of quarter sessions and every magistrate, before whom any person shall be brought for any of the crimes mentioned in section 2:186-3 of this title, shall, by recognizance with sufficient surety, bind all such persons as declare against the person for any of such crimes, to appear in the supreme court the term following, or at the next session of the court of oyer and terminer for the county where the offence was committed, or in such other court where such offence is cognizable, then and there to give evidence, and certify such recognizance and recognizances taken before them to the court where such persons are bound to appear, on or before the first day of the term or session of such court."

The crimes referred to in the foregoing statute are set forth in R.S. 2:186-3, and are as follows:

"Treason, misprision of treason, murder, manslaughter, sodomy, rape, arson, burglary, robbery or forgery."

The crime for which these persons are being held as material witnesses is not within the foregoing statute, but is a misdemeanor. This being a criminal statute, it must be strictly construed; and unless the witnesses are within the specific categories stated in the statute, there is no warrant for holding them to bail or to confirming them as material witnesses.

2. Even if there were any statutory authority for holding these witnesses to bail and confining them, the statute has been violated in that R.S. 2:187-19 requires that the Judge of the Court of Quarter Sessions bind by recognizance a material witness "When in his judgment the ends of justice so require." The record shows that no such judgment was exercised by Judge Brown, but, on the contrary, he merely accepted, without exception, the

recommendation of the Prosecutor.

v A further violation of this statute lies in the fact that the witnesses were further restricted of their liberty than was necessary for their detention (R.S. 2:187-21) in that they were held incommunicado and deprived of their freedom in every respect. This same section of the statute requires that the person detained as a witness "shall not be kept in the same apartment with or be provided with the same fare as persons charged with or convicted of crime." This provision of the statute was flagrantly violated.

A further violation of the statute lies in the unreasonable length of detention of these witnesses who have been incarcerated since June 6, 1942. R.S. 2:187-19 provides that the witnesses be held "to appear at the next court of oyer and terminer or quarter sessions, as the case may require, to be held within the county where the trial thereof shall be had." The record shows that the Court of Quarter Sessions was actually in session since the incarceration of these witnesses.

3. If these witnesses are being held under the foregoing statutes, their detention is unlawful because the statute itself is unconstitutional in that there is no provision made for a hearing, nor does the statute make provision for due process of law. The instant case demonstrates that anyone may be arrested and held incommunicado indefinitely with no criminal charge being lodged against him, but simply upon the ground that he might be a material witness. Such a person may be held incommunicado and prevented from seeing his family, friends and relatives. Such a proceeding would be violative of the Constitution of the United States and of the State of New Jersey. No provision is contained in the statute for counsel, nor is there any requirement of proof upon which the commitment to jail may be predicated.

4. The detention of all of the persons herein mentioned is unlawful and in derogation of the constitutional rights of the parties involved. In the case of Helen de Werth, the record shows that she was not only without counsel, but that the Hudson County authorities actually deceived her by stating that she did not require counsel. The Constitution of New Jersey and of the United States gives the right of counsel to a person accused of crime. In her case, as well as in the other cases, there has been a flagrant violation of constitutional rights, and the entire proceedings call to mind the concentration camps of Germany where Gestapo methods are used. Such a condition is abhorrent and should not be tolerated in a democracy.

3. If these witnesses are being held under the foregoing statutes, their detention is unlawful because the statute itself is unconstitutional in that there is no provision made for a hearing, nor does the statute make provision made for a hearing, nor does the statute make provision for due process of law. The instant case demonstrates that anyone may be arrested and held incommunicado indefinitely with no criminal charge being lodged against him, but simply upon the ground that he might be a material witness. Such a person may be held incommunicado and prevented from seeing his family, friends and relatives. Such a proceeding would be violative of the Constitution of the United States and of the State of New Jersey. No provision is contained in the statute for counsel, nor is there any requirement of proof upon which the commitment to jail may be predicated.

4. The detention of all of the persons herein mentioned is unlawful and in derogation of the constitutional rights of the parties involved. In the case of Helen de Werth, the record shows that she was not only without counsel, but that the Hudson County authorities actually deceived her by stating that she did not require counsel. The Constitution of New Jersey and of the United States gives the right of counsel to a person accused of crime. In her case, as well as in the other cases, there has been a flagrant violation of constitutional rights, and the entire proceedings call to mind the concentration camps of Germany where Gestapo methods are used. Such a condition is abhorrent and should not be tolerated in a democracy.

RECOMMENDATIONS

We respectfully recommend to your Excellency that the situation herein reported be remedied as speedily as possible, and with particular reference to the persons presently incarcerated, we believe immediate relief should be granted. We recommend that recourse be made to simple and expeditious procedure outlined in R.S. 2:82-3, which is as follows:

"When the Supreme Court, or any justice thereof, shall have evidence from any judicial proceeding had before them that a person within this state is illegally confined and restrained of his liberty, such court or justice shall issue a writ of habeas corpus for his relief, although no petition be presented or application made for such writ. If the writ is granted by the court or justice on their own motion, no fees shall be allowed."

This statute is applicable in the instant case because the matters and things hereinabove reported were brought out in a judicial proceeding before John Drewen, Esquire, a Supreme Court Commissioner designated by Justice Clarence E. Case of the New Jersey Supreme Court, in the matter of State vs. James J. Donovan, et als. This testimony was adduced upon depositions taken pursuant to the precept of the New Jersey Supreme Court upon a writ of certiorari to review the legality of the indictments returned against the defendants therein. As we understand it, these depositions will be presented to the New Jersey Supreme Court, Part II, when completed. We do not know when the depositions will be completed, and because of the exigencies of the situation, we respectfully urge that the record in its present state be brought to the attention of the Justices of the Supreme Court so that a writ of habeas corpus, upon the basis of this record, may issue forthwith. The language of the statute under which such writ should issue appears to be mandatory, in that the words used are "shall issue a writ of habeas corpus for his relief" where a person "is illegally confined and restrained of his liberty." The record here shows such to be the fact with respect to the persons herein mentioned.

Incidentally, we feel that it is incumbent upon us to recommend to your Excellency that R.S. 2:187-18 be immediately amended in order to provide for due process of law and to prevent the gross abuse of process under color of this statute.

We have ordered a transcript of the argument had before Judge Fabe in the United States District Court, but unfortunately we have been unable to obtain the same to submit to your Excellency at this time, but we have been assured that it will be available shortly. We beg leave to submit this to you as a supplement to this report as soon as we obtain the same.

Respectfully submitted,

/s/

WILLIAM A. DARTZ
Counsel for the Commission

/s/

HERBERT J. FRANKLIN
Counsel for the Commission

Dated: November 6, 1942

#####