

9-23-1963

## Correspondence, John C. Stennis, September 23-October 14, 1963

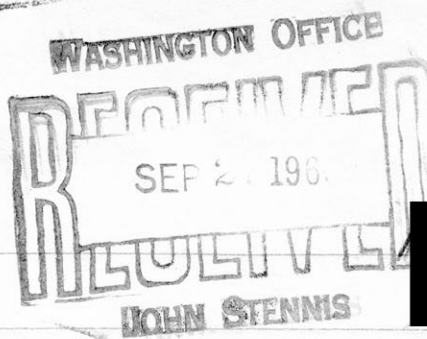
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130  
Gulfport, Miss.  
Sept. 23, 1963


Honorable John D. Stennis  
United States Senator  
Washington, D. C.

Dear Sir:

I would like very much to know if the article that Mr. David Lawrence reported in paper Sept. 13, 1963 is correct. If so what is the Senate in Congress doing about it. Request reply to this letter.

P. S.

Copy of the  
Article is enclosed.

Sincerely  
  
J

**DAVID LAWRENCE—**

## **No Authority For Use Of Troops In Alabama**

WASHINGTON — What Governor Wallace of Alabama did may be subject to wide criticism, but, viewed strictly from a constitutional standpoint, President Kennedy had not one iota of authority to use troops in Alabama. Many people will say that the end justified the means, but this is exactly the rule of expediency which has been used again and again throughout the world to justify a military coup d'etat or a dictatorship.

This weakness on the constitutional side emerged when President Eisenhower used troops at Little Rock, Ark., and when President Kennedy did the same at Oxford, Miss., and more recently at Tuscaloosa, Ala. The proclamation and executive order issued by Mr. Kennedy cites two specific statutes as giving him authority for his action, but nowhere in these statutes is the chief executive authorized to use federal troops to enforce court orders. There was once a law which gave such authority to the President, but it was repealed by Congress just before the Little Rock episode in 1957.

Today the only constitutional method of enforcing court orders is by arrests made by U.S. marshals, followed by contempt proceedings if necessary, and sentences by judges in courts of law.

The two statutes cited—Sections 332 and 333 of Title 10 of the United States Code—permit the use of armed forces whenever there is "any insurrection, domestic violence, unlawful combination, or conspiracy" that hinders the execution of the laws of a state or the laws of the United States, or that impedes the course of justice under those laws.

But the desegregation decisions of the Supreme Court have never been enacted into law and can be legally enforced only by the judicial process itself, without the use of the militia or the armed forces.

The impression given by the President's proclamation is that there has been a "rebellion" and

that the state of Alabama itself, as well as its citizens and local officials, has resisted a law of the United States.

But the fact is that there has never been a statute passed by Congress requiring desegregation of public schools, and there is no mention of education in the constitution. The Fourteenth Amendment itself—on which the court rulings are based—specifies that Congress alone shall pass laws enforcing its provisions.

The governor of Alabama has a right to decline to accept what he considers an unwise decision by the Supreme Court relating to a state law, and to test it again and again. The 1954 ruling of the high court was rendered in a particular case, and it is the right of litigants to bring in other cases with new facts and to carry them to the Supreme Court on the theory that a new argument might be devised which would modify or reverse a previous decision.

Yet the President in his proclamation takes it for granted that a federal court decision and a federal law are the same thing, and that the statutes which give him authority to use troops to enforce the laws of the United States are the same as a statute authorizing the use of troops to enforce court decisions. The method of enforcement of court orders—arrest by U.S. marshals—is the only one at present provided by Congress.

Congress has been in session almost uninterruptedly while the crises in Alabama and Mississippi have been going on and although a majority of both houses of Congress are of the same political party as the President, there has not been a statute passed authorizing the use of troops to enforce court orders or requiring desegregation of public schools.

The statutes quoted by Mr. Kennedy refer to "insurrection, domestic violence, unlawful combination or conspiracy." But there is no evidence that the acts of a governor who exercises his authority as chief executive of state to block what he believes is an unwise court order constitutes a rebellion or conspiracy against the "laws" of the United States.

State troopers have been maintaining order, and the state militia was available to suppress violence if the state troopers and local police were not adequate for the occasion. President Kennedy, however, chose to regard the act of the governor himself as an act of rebellion against the authority of the United States, though the statutes refer only to acts that impede the enforcement of laws—not court decisions.

Many people will say that legal technicalities are of no consequence and that by this time the governor of Alabama and any other governor should recognize "The Law of the Land." But these are observations which have no regard for the actual wording of the laws of the United States and the constitution itself. As a matter of fact, Congress has specifically declared in Section 1385 of Title 18 of the United States code:

"Whoever, except in cases and under circumstances expressly authorized by the constitution or act of Congress, wilfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years or both."

Thus, there is no authority today to federalize the state militia or to use federal troops to enforce court orders even as an aid to U.S. marshals. But, as the governor of Arkansas said on Tuesday, a President cannot be arrested. So the legal question may never be resolved by the Supreme Court.

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## United States Senate

COMMITTEE ON ARMED SERVICES

October 14, 1963

Mr. [REDACTED]  
P. O. [REDACTED]  
Gulfport, Mississippi

Dear [REDACTED]:

This will acknowledge and thank you for your recent letter and the enclosed article by David Lawrence.

I am personally of the opinion that Mr. Lawrence's article is absolutely correct and that the President had no authority whatever to send troops to Birmingham during the recent trouble there. This was a very dangerous action on the part of the President and I have voiced my very strong disapproval of this type of intimidation. In fact, I made a speech on the floor of the Senate strongly condemning this action. A copy of this speech is enclosed for your information.

There is very little which the Senate can do about such exercises of power by the President. Of course, we can always cut off appropriations for any particular agency of government. However, it is very difficult to consider cutting off the appropriations for the Department of Defense; and, of course, there are a great number of Senators who agreed with this action of the President.

I want you to know, however, that I personally oppose all such actions as this and will continue bringing to the attention of the Senate any such illegal action by the President.

With every good wish, I am

Sincerely yours,

John Stennis  
United States Senator

JS/asa  
Enclosure

32 - Birmingham  
Troops