Supplementary Material

Chapter 7: The Republican Era—Criminal Justice/Due Process and Habeas Corpus/Habeas Corpus

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In re Neagle, 135 U.S. 1 (1890)

David Neagle was assigned to serve as a bodyguard for Justice Stephen Field while he was in California. Field needed a bodyguard because he had ruled against David Terry and his wife in a lawsuit decided while Field was riding circuit in his home state of California. Both Terry and his wife had a long history of threatening to kill judges who had heard the case, and Terry had been imprisoned for drawing a bowie knife in the courtroom (court marshals had also stopped Ms. Terry from pulling a pistol from her purse). When Justice Field was set to return to California in 1889 to perform his circuit duties, the local press was filled with reports of the impending attack on him. While on a train between Los Angeles and San Francisco, Field and Neagle encountered the David Terry and his wife in a dining car. While David Terry attacked the sitting justice from behind with his fists, Ms. Terry ran to her sleeping car to retrieve her pistol. In the ensuing scuffle, Neagle shot and killed David Terry. Ms. Terry immediately filed a complaint with the local sheriff, who issued an arrest warrant for Neagle and Field. The governor intervened to have the arrest warrant for Justice Field dismissed, but Neagle was arrested. Neagle asked a judge on the Court of Appeals for the Ninth Circuit a writ of habeas corpus which would release him from custody. The circuit court judge granted the writ. Cunningham, the California sheriff who was Neagle's jailer appealed to the U.S. Supreme Court.

The Supreme Court affirmed the decision to grant habeas corpus by a 6–2 vote. Justice Miller's majority opinion declared that the Court could grant habeas writs only when authorized to do so by federal legislation. The relevant federal statute specified that a writ of habeas corpus could remove a prisoner from state jail only if the prisoner was "in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof, or is in custody in violation of the Constitution or treaty of the United States." This meant that the critical question for Neagle was whether he was acting "in pursuance of a law of the United States" when he was defending Field and killed Terry. Since Congress had not explicitly empowered federal marshals to serve as personal bodyguards for the justices, Neagle's actions depended on the inherent authority of the attorney general to order such an action. Justice Miller's maintained that the attorney general had the power to order Neagle to protect Justice Field. How does he justify that decision? Why does the dissent disagree? Who has the better of the argument? Does In re Neagle *demonstrate the importance of federal executive and judicial power to correct state interference with federal prerogatives or is the decision and unconstitutional intrusion of state efforts to enforce the criminal law?*

JUSTICE MILLER delivered the opinion of the Court.

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We have no doubt that Justice Field when attacked by Terry was engaged in the discharge of his duties as Circuit Justice of the Ninth Circuit, and was entitled to all the protection under those circumstances which the law could give him.

It is urged, however, that there exists no statute authorizing any such protection as that which Neagle was instructed to give Judge Field in the present case, and indeed no protection whatever against a vindictive or malicious assault growing out of the faithful discharge of his official duties; and that the language of section 753 of the Revised Statutes, that the party seeking the benefit of the writ of habeas corpus must in this connection show that he is "in custody for an act done or omitted in pursuance of a law of the United States," makes it necessary that upon this occasion it should be shown that the act for

which Neagle is imprisoned was done by virtue of an act of Congress. It is not supposed that any special act of Congress exists which authorizes the marshals or deputy marshals of the United States in express terms to accompany the judges of the Supreme Court through their circuits, and act as a body-guard to them, to defend them against malicious assaults against their persons. But we are of opinion that this view of the statute is an unwarranted restriction of the meaning of a law designed to extend in a liberal manner the benefit of the writ of habeas corpus to persons imprisoned for the performance of their duty. And we are satisfied that if it was the duty of Neagle, under the circumstances, a duty which could only arise under the laws of the United States, to defend Justice Field from a murderous attack upon him, he brings himself within the meaning of the section we have recited. . . .

In the view we take of the Constitution of the United States, any obligation fairly and properly inferable from that instrument, or any duty of the marshal to be derived from the general scope of his duties under the laws of the United States, is "a law" within the meaning of this phrase. It would be a great reproach to the system of government of the United States, declared to be within its sphere sovereign and supreme, if there is to be found within the domain of its powers no means of protecting the judges, in the conscientious and faithful discharge of their duties, from the malice and hatred of those upon whom their judgments may operate unfavorably.

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If a person in the situation of Judge Field could have no other guarantee of his personal safety, while engaged in the conscientious discharge of a disagreeable duty, than the fact that if he was murdered his murderer would be subject to the laws of a State and by those laws could be punished, the security would be very insufficient. . . . We do not believe that the government of the United States is thus inefficient, or that its Constitution and laws have left the high officers of the government so defenceless and unprotected.

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. . . The duties which are . . . imposed upon [the president] he is further enabled to perform by the recognition in the Constitution, and the creation by acts of Congress, of executive departments, which have varied in number from four or five to seven or eight, the heads of which are familiarly called cabinet ministers. These aid him in the performance of the great duties of his office, and represent him in a thousand acts to which it can hardly be supposed his personal attention is called, and thus he is enabled to fulfill the duty of, his great department, expressed in the phrase that "he shall take care that the laws be faithfully executed."

Is this duty limited to the enforcement of acts of Congress or of treaties of the United States according to their express terms, or does it include the rights, duties and obligations growing out of the Constitution itself, our international relations, and all the protection implied by the nature of the government under the Constitution?

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So, if the President or the Postmaster General is advised that the mails of the United States, possibly carrying treasure, are liable to be robbed and the mail carriers assaulted and murdered in any particular region of country, who can doubt the authority of the President or of one of the executive departments under him to make an order for the protection of the mail and of the persons and lives of its carriers, by doing exactly what was done in the case of Justice Field, namely, providing a sufficient guard, whether it be by soldiers of the army or by marshals of the United States, with a posse comitatus properly armed and equipped, to secure the safe performance of the duty of carrying the mail wherever it may be intended to go?

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We cannot doubt the power of the President to take measures for the protection of a judge of one of the courts of the United States. . . .

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To the objection made in argument, that the prisoner is discharged by this writ from the power of the state court to try him for the whole offence, the reply is, that if the prisoner is held in the state court to answer for an act which he was authorized to do by the law of the United States, which it was his duty to do as marshal of the United States, and if in doing that act he did no more than what was necessary and

proper for him to do, he cannot be guilty of a crime under the law of the State of California. When these things are shown, it is established that he is innocent of any crime against the laws of the State, or of any other authority whatever. There is no occasion for any further trial in the state court, or in any court. The Circuit Court of the United States was as competent to ascertain these facts as any other tribunal, and it was not at all necessary that a jury should be impaneled to render a verdict on them. It is the exercise of a power common under all systems of criminal jurisprudence. . . .

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We therefore affirm the judgment of the Circuit Court authorizing his discharge from the custody of the sheriff of San Joaquin County.

JUSTICE FIELD took no part in the decision of this case.

JUSTICE LAMAR, with whom CHIEF JUSTICE FULLER joins, dissenting.

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. . . We recognize that the powers of the government, "within its sphere," as defined by the Constitution, and interpreted by the well-settled principles which have resulted from a century of wise and patriotic analysis, are supreme; that these supreme powers extend to the protection of itself and all of its agencies, as well as to the preservation and the perpetuation of its usefulness; and that these powers may be found not only in the express authorities conferred by the Constitution, but also in necessary and proper implications. But while that is all true, it is also true that the powers must be exercised, not only by the organs, but also in conformity with the modes, prescribed by the Constitution itself. These great federal powers, whose existence in all their plenitude and energy is incontestable, are not autocratic and lawless; they are organized powers, committed by the people to the hands of their servants for their own government, and distributed among the legislative, executive, and judicial departments; they are no extra the Constitution, for, in and by that Constitution, and in and by it alone, the United States, as a great democratic federal republic, was called into existence, and finds its continued existence possible. . . .

The President is sworn to "preserve, protect and defend the Constitution." That oath has great significance. The sections which follow that prescribing the oath (secs. 2 and 3 of Art. 2) prescribe the duties and fix the powers of the President. But one very prominent feature of the Constitution which he is sworn to preserve, and which the whole body of the judiciary are bound to enforce, is the closing paragraph of sec. 8, Art, 1, in which it is declared that "the Congress shall have power . . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

This clause is that which contains the germ of all the implication of powers under the Constitution. It is that which has built up the Congress of the United States into the most august and imposing legislative assembly in the world; and which has secured vigor to the practical operations of the government, and at the same time tended largely to preserve the equilibrium of its various powers among its co-ordinate departments, as partitioned by that instrument. And that clause alone, conclusively refutes the assertion of the Attorney General, that it was "the duty of the executive department of the United States to guard and protect, at any hazard, the life of Justice Field in the discharge of his duty, because such protection is essential to the existence of the government." Waiving the question of the essentiality of any such protection to the existence of the government, the manifest answer is, that the protection needed and to be given must proceed not from the President, but primarily from Congress. Again, while it is the President's duty to take care that the laws be faithfully executed, it is not his duty to make laws or a law of the United States. . . . In fact, for the President to have undertaken to make any law of the United States pertinent to this matter would have been to invade the domain of power expressly committed by the Constitution exclusively to Congress. That body was perfectly able to pass such laws as it should deem expedient in reference to such matter. . . .

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For these reasons, as briefly stated as possible, we think the judgment of the court below should be reversed and the prisoner remanded to the custody of the sheriff of San Joaquin County, California; and we are the less reluctant to express this conclusion, because we cannot permit ourselves to doubt that the authorities of the State of California are competent and willing to do justice; and that even if the appellee had been indicted, and had gone to trial upon this record, God and his country would have given him a good deliverance.