

Arttime, Manuel al  
vs.  
Gerstein, Richard E.

PAGE 365  
DOCKET 361  
DIVISION EDWIN C. CHRISTIE

CASE NO. 73-19490 7  
CA:01

INDEX AA 299-0

# CIVIL ACTION IN CIRCUIT COURT

GENERAL JURISDICTION DIVISION  
IN AND FOR  
DADE COUNTY, FLORIDA

REQUEST  
FOR  
TRANSFER  
DENIED  
HARVIE S. DuVAL  
CIRCUIT JUDGE

This File Must Not Be Withheld from  
Clerk's Office Without Leave of Court.

RICHARD P. BRINKER  
Clerk, Circuit Court

Manuel Arttime et al

Plaintiff

vs.  
Richard E. Gerstein al

Defendant

Action for Declaratory Judgment, etc.

Ellis S. Ruben

Attorney for Plaintiff

FILED FOR RECORD

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IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

RICHARD P. BRINKER  
CLERK CIRCUIT COURT  
DADE CO. FLA.

CASE NO.

73-19490

CA-01

MANUEL ARTIME, CLARA BARKER,  
JANET STURGIS, CELIA  
GONZALEZ, and THANIA (SYLVIA)  
AMENGUAL,

:  
: IRWIN G. CHRISTIE

Plaintiffs,

: COMPLAINT FOR DECLARATORY  
JUDGMENT AND DAMAGES

-vs-

RICHARD E. GERSTEIN, as State  
Attorney for the Eleventh  
Judicial Circuit of Florida,  
and MARTIN DARDIS, an  
Investigator for The State  
Attorney for the Eleventh  
Judicial Circuit of Florida,

:  
: *Depo 2/60*  
: *JS*  
: RICHARD P. BRINKER  
CLERK CIRCUIT COURT  
DADE CO. FLA.

Defendants.

73 AUG 9 PM 4.55

FILED FOR RECORD

*361*  
*265*

The Plaintiffs, by and through their undersigned attorney, bring this action pursuant to Chapter 86 Florida Statutes for the purpose of determining a justiciable controversy between the parties hereto and for injunctive relief, and on their own behalf and on behalf of all similarly situated citizens. The class represented by Plaintiffs is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; and Plaintiffs will fairly and adequately protect the interests of the class. Defendants have acted on grounds generally applicable to the class thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole:

COUNT I

1. Plaintiff, MANUEL ARTIME, is a resident of the State of Florida, residing in Dade County, Florida; the Defendants are sued in their respective capacity as described in the style of this cause.

2. On June 14, 1973, the Defendant, RICHARD E. GERSTEIN, procured from the Clerk of the Circuit Court a Witness Subpoena "Criminal" directed to the Petitioner commanding him "to be and appear before the State Attorney, of the Eleventh Judicial Circuit of Florida, . . . On June 15, 1973, at 10:30 A.M., to testify and the truth to speak in behalf of the STATE in a certain matter. . ." Presumably, said Witness Subpoena was promulgated pursuant to Section 27.04, Florida Statutes, which allows the State Attorney to call before him under the process of the Court and examine, under oath, any person whom the State Attorney has reason to believe may have any information concerning the criminal cause under investigation, either before or after indictment or Information filed, or before or after such person may have been served with a Subpoena as a witness for any defendant, "so long as such examination is carried on in a lawful manner." Barnes v. State, Fla. Sup. Ct. 58 So. 2d 157 (1952).

3. After being duly served with said Subpeona, the Plaintiff appeared at the time and place prescribed pursuant to and under compulsion of said Subpoena. The Defendant, MARTIN DARDIS, holding the title of State Attorney Investigator under authority of Section 27.255, Florida Statutes, interrogated the Plaintiff. The Plaintiff did not appear before the State Attorney of the Eleventh Judicial Circuit of Florida nor any Assistant State Attorney, nor was he sworn to testify and the truth to speak, nor was there any stenographer or Court Reporter present during the interrogation by the Defendant, MARTIN DARDIS; nor was Plaintiff advised of his right to counsel before or during interrogation.

4. Following the questioning by Defendant, DARDIS, your Plaintiff requested that there be no release of the information obtained by the Defendants to the Press Media. Defendant DARDIS agreed. On June 21, 1973, in Dade County Circuit Court, Case No. 73-14213 (Judge Falk), after a full hearing, the Defendants herein were enjoined from releasing the testimony of

the Plaintiff therein to the Media or Third Parties not engaged in law enforcement pending information or Indictment, unless by Court Order.

5. On July 5, 1973, Plaintiff was contacted by the Defendants and was requested to return to the Office of the Defendants for further questioning pursuant to the original Subpoena. Plaintiff responded and was thereupon placed under oath and was questioned by defendant DARDIS in the presence of a Stenographer. Again, Plaintiff was not advised of his right to counsel before or during interrogation. Thereafter, the contents of the questions and answers between the Plaintiff and the Defendants was released to a representative of The New York Times, a daily newspaper of Worldwide Circulation, which newspaper then published the interview in the Monday, July 9, 1973 edition of the New York Times, Page 25C, dated "MIAMI, JULY 8, 1973." Also on Monday, July 9, 1973, the interview appeared in the editions of the Miami News, a daily newspaper of general circulation throughout the State of Florida; also, thereafter, on July 10, 1973, the interview appeared in the editions of The Miami Herald, a newspaper of general circulation throughout the State of Florida. All such publications were contrary to the promise of the Defendants; were contrary to the right of privacy of the Plaintiff and were in violation of this Court's Final Judgment dated June 21, 1973.

6. Plaintiff alleges that the Defendants have used Section 27.04 of the Florida Statutes, to compel answers from persons subpoenaed to appear before the Defendant RICHARD E. GERSTEIN, or Assistant State Attorney, but who in fact have appeared before the Defendant, MARTIN DARDIS, who has no authority to place a witness under oath nor to compel a witness to testify nor can he conduct any interrogation of a witness. Then, contrary to existing Florida law, the results of said interrogations are released and made public by the Defendants or their agents, all to the detriment and danger to the Plaintiff and in a flagrant, unwarranted and

harmful abuse of the Plaintiff's right of privacy.

7. As a result of the interrogation of the Plaintiff by the Defendants, the Plaintiff was not indicted by a Grand Jury nor was he Informed against by any prosecuting Officer of the State of Florida.

8. Plaintiff alleges that the activities and conduct of the Defendants commencing June 14, 1973, and continuing up to the filing of this action is invalid on its face and is arbitrary, unjust, oppressive and unreasonable in that it is totally unrelated to the proper performance of the duties of both of the Defendants and their agents, servants and employees. The continued release to the press of testimony procured by the Defendants by compulsive subpoena power relating to the Plaintiff and his background and activities constitute a trial by the press of the Plaintiff and endangers his and his family's safety and welfare and unjustly invade his right to privacy; in addition, Plaintiff is being deprived of due process of law and equal protection under the law because of the arbitrary and unwarranted actions of the Defendants and their unlawful interference with the private life of the Plaintiff.

9. As a result of the foregoing, Plaintiff stands aggrieved and the legal questions and facts alleged have not been construed of record; therefore, Plaintiff is in doubt, insecure and uncertain as to his rights. Unless Defendants are restrained and enjoined, injury to the Plaintiff will be done and his rights will be lost, causing him irreparable injury. Plaintiff alleges the equities favor him and are against the Defendants and Plaintiff has no other adequate remedy other than obtaining injunctive relief.

WHEREFORE, Plaintiff prays that this Court will:

A. Take jurisdiction of this cause.

B. Grant temporary injunction with notice that will permit this Court's Final Order to be effective.

C. Declare that the Defendants, their agents, servants and employees are enjoined from revealing to anyone other than a Grand Jury any Information which they have acquired or may acquire as a result of any investigation involving MANUEL ARTIME unless and until an Information is filed against MANUEL ARTIME charging him with a crime or an Indictment is returned by a Grand Jury.

D. Declare that interrogation of witnesses under subpoena by the Defendant MARTIN DARDIS, is violative of the authority of a State Attorney investigator under Section 27.255, Florida Statutes.

E. Grant a permanent injunction restraining the Defendants, their agents and servants and employees from publishing to anyone any information acquired as a result of any investigation involving MANUEL ARTIME unless and until MANUEL ARTIME is indicted by a grand jury or Informed against charging him with a crime.

F. Grant Plaintiff other and proper relief.

#### COUNT II

1. Plaintiff, CLARA BARKER, is a resident of the State of Florida, residing in Dade County, Florida; and the Defendants are sued in their respective capacity as described in the style of this cause.

2. On July 12, 1973, the Defendant, RICHARD E. GERSTEIN, procured from the Clerk of the Circuit Court a Witness Subpoena "Criminal" direction to the Plaintiff commanding her "to be and appear before the State Attorney, of the Eleventh Judicial Circuit of Florida, . . . on July 12, 1973, at 3:00 P. M. to testify and the truth to speak in behalf of the STATE in a certain matter. . ." Presumably, said Witness Subpoena was promulgated pursuant to Section 27.04, Florida Statutes, which allows the State Attorney to call before him under the process of the Court and examine, under oath, any

person whom the State Attorney has reason to believe may have any information concerning the criminal cause under investigation, either before or after indictment or Information filed, or before or after such person may have been served with a Subpoena as a witness for any defendant, "so long as such examination is carried on in a lawful manner." Barnes v. State, Fla. Sup. Ct. 58 So. 2d 157 (1952).

3. After being duly served with said Subpoena, the Plaintiff appeared at the time and place prescribed pursuant to and under compulsion of said Subpoena. Following the questioning by Defendant, GERSTEIN, Plaintiff requested that there be no release of the information obtained by the Defendants to the Press Media. Defendant GERSTEIN agreed.

4. On July 12, 1973, the contents of the questions and answers between the Plaintiff and the Defendant was released to a representative of the Miami Herald and the Miami News, daily newspapers of general circulation throughout the State of Florida, which newspapers then published the interview on July 13, 1973. All such publications were contrary to the promise of the Defendants; were contrary to the right of privacy of the Plaintiff and were in violation of this Court's Final Judgment dated June 21, 1973, in Dade County Circuit Court, Case No. 73-14213 (Judge Falk), after a full hearing, the Defendants herein were enjoined from releasing the testimony of the Plaintiff therein to the Media or Third Parties not engaged in law enforcement pending information or Indictment, unless by Court Order.

5. Plaintiff alleges that the Defendants have used Section 27.04 of the Florida Statutes, to compel answers from persons subpoenaed to appear before the Defendant RICHARD E. GERSTEIN; then, contrary to existing Florida Law, the results of said interrogations are released and made public by the Defendants or their agents, all to the detriment and danger to the Plaintiff and in a flagrant, unwarranted and harmful abuse of the Plaintiff's right of privacy.

6. As a result of the interrogation of the Plaintiff by the Defendants, the Plaintiff was not indicted by a Grand Jury nor was she informed against by any prosecuting officer of the State of Florida.

7. Plaintiff alleges that the activities and conduct of the Defendants commencing July 12, 1973, and continuing up to the filing of this action is invalid on its face and is arbitrary, unjust, oppressive and unreasonable in that it is totally unrelated to the proper performance of the duties of both of the Defendants and their agents, servants and employees. The continued release to the press of testimony procured by the Defendants by compulsive subpoena power relating to the Plaintiff's activities and her background constitute a trial by the press of the Plaintiff and endangers her and her family's safety and welfare and unjustly invades her right to privacy; in addition, Plaintiff is being deprived of due process of law and equal protection under the law because of the arbitrary and unwarranted actions of the Defendants and their unlawful interference with the private life of the Plaintiff.

8. As a result of the foregoing, Plaintiff stands aggrieved and the legal questions and facts alleged have not been construed of record; therefore, Plaintiff is in doubt, insecure and uncertain as to her rights. Unless Defendants are restrained and enjoined, injury to the Plaintiff will be done and her rights will be lost, causing her irreparable injury. Plaintiff alleges the equities favor her and are against the Defendants and Plaintiff has no other adequate remedy other than obtaining injunctive relief.

WHEREFORE, Plaintiff prays that this Court will:

A. Take jurisdiction of this cause.



B. Grant temporary injunction with notice that will permit this Court's Final Order to be effective.

C. Declare that the Defendants, their agents, servants and employees are enjoined from revealing to anyone other than an Grand Jury any Information which they have acquired or may acquire as a result of any investigation involving CLARA BARKER unless and until an Information is filed against CLARA BARKER charging her with a crime or an Indictment is returned by a grand jury.

D. Grant a permanent injunction restraining the Defendants, their agents and servants and employees from publishing to anyone any information acquired as a result of any investigation involving CLARA BARKER unless and until CLARA BARKER is indicted by a Grand Jury or Informed against charging her with a crime.

E. Grant the Plaintiff other and proper relief.

### COUNT III

1. Plaintiff, JANET STURGIS, is a resident of the State of Florida, residing in Dade County, Florida; the Defendants are sued in their respective capacity as described in the style of this cause.

2. Plaintiff re-alleges and re-avers each and every allegation set forth in Paragraph "2" of Count "II" as if set out fully herein.

3. After being duly served with said Subpoena, the Plaintiff, who did not even have enough time to consult with an attorney, appeared at the time and place prescribed pursuant to and under compulsion of said Subpoena. Before the questioning by Defendant, GERSTEIN, he did not advise Plaintiff of her constitutional rights as to self-incrimination and assistance of counsel. Following the questioning by Defendant, GERSTEIN, Plaintiff requested that there be no release of the information obtained by the defendants to the Press Media. Defendant, GERSTEIN, agree.

4. Plaintiff re-alleges and re-avers each and every allegation contained in Paragraphs "4", "5", "6", "7" and "8" of COUNT II as if set out fully herein.

WHEREFORE, Plaintiff, JANET STURGIS, seeks the same relief as fully set forth in COUNTS I and II of this Complaint.

COUNT IV

1. Plaintiff, CELIA GONZALEZ, is a resident of the State of Florida, residing in Dade County, Florida; the Defendants are sued in their respective capacity as described in the style of this cause.

2. Plaintiff re-alleges and re-avers each and every allegation contained in Paragraph "2" of COUNT "II" and Paragraphs "3" and "4" of COUNT "III" as if set out fully herein.

WHEREFORE, Plaintiff, CELIA GONZALEZ, seeks the same relief as fully set forth in COUNTS I and II of this Complaint.

COUNT V

1. Plaintiff, THANIA (SYLVIA) AMENGUAL, is a resident of the State of Florida, residing in Dade County, Florida; the Defendants are sued in their respective capacity as described in the style of this cause.

2. Plaintiff re-alleges and re-avers each and every allegation contained in Paragraph "2" of COUNT "IV", as if set out fully herein.

WHEREFORE, Plaintiff, THANIA (SYLVIA) AMENGUAL, seeks the same relief as fully set forth in COUNTS I and II of this Complaint.

ELLIS RUBIN LAW OFFICES  
Attorney for Plaintiffs  
407 Lincoln Road-Suite 11-A  
Miami Beach, Florida 33139  
Tel: 532-4477

BY: 

ELLIS S. RUBIN

Miami Herald  
June 5, 2005  
1A

J.D. 271  
299-07

## WATERGATE

# Investigator tries to reclaim role in case

■ **The unmasking of Deep Throat stirred up memories — and discontent — for Martin Dardis, a less heralded but key player who helped unravel the Watergate conspiracy.**

BY CARA BUCKLEY  
cbuckley@herald.com

**PALM CITY —** The great investigator's anger stubbornly endures, 33 years after he showed a long-haired, insolent reporter named Carl Bernstein copies of a Watergate burglar's bank checks.

In 1972, Martin Dardis,

the hardheaded chief investigator for Dade County State Attorney Richard Gerstein, was tipped off that crisp \$100 bills found stuffed in the pockets of the Watergate burglars were issued by a Miami bank. History would pivot on what Dardis did next. His investigation led to the discovery that money found on the Watergate burglars came from the Committee to Reelect the President, known as CRP or Creep. The connection helped unearth further misdeeds

• TURN TO DARDIS, 2A



MARTIN DARDIS

■ **E. HOWARD HUNT RECALLS HIS OWN WATERGATE ORDEAL WITH BITTERNESS AND PRIDE, 1B**

■ **HERALD.COM: CLICK TODAY'S EXTRAS FOR MORE AT FORMER HERALD AND WASHINGTON POST RESEARCHER'S WEBLOG, 'INFOMANIAC'**

# 'I knew exactly what was going on'

• DARDIS, FROM 1A

that, once brought to light, forced the resignation of President Richard Nixon.

But Dardis insists the rendition of history recorded in Bernstein and Bob Woodward's book and subsequent movie, *All The President's Men*, grossly misrepresents him. His crucial role in unraveling Watergate was unfairly diminished, Dardis says, and just as vexing, he was portrayed as "a buffoon" by Bernstein, whose account said he wore a threadbare sports coat. Dardis, who considered himself a natty dresser, was also portrayed in the movie by a stocky, rumpled Ned Beatty.



BEATTY

"I don't want any credit; I don't want any plaques or any damn thing," said Dardis, now 82, still crusty and feisty, though age has begun to erode his mind. "I just don't want it to appear that I didn't know what the hell was going on. I showed him where the damn money came from. I knew exactly what was going on. Normally, what the hell would I care? But in this case, we're talking about history."

The unmasking last week of the FBI's Mark Felt as Deep Throat, Woodward's famous clandestine Watergate source, stirred up lingering resentments for Dardis, a much decorated World War II veteran who became an investigator, then an undercover agent and finally a writer for *Sports Illustrated*. Dardis always had a gnawing sense that Deep Throat's importance was somewhat over-exaggerated, and that bothered him, since he felt his own role was underplayed.

In 1972, after learning of the Miami bank's cash connection with the Watergate burglars, Dardis subpoenaed the bank's records. One burglar, Bernard L. Barker, a Miamian who worked with the CIA during the Bay of Pigs, held two accounts there



HERALD FILE

**KEY PLAYER:** Martin Dardis says his role in Watergate has been diminished.

and five strange deposits had gone into one. Four checks totaling \$89,000 had come from Mexico City and one \$25,000 check from Boca



BARKER

Raton bore the name of a Kenneth Dahlberg. Dardis tracked a bank official down in Costa Rica and discovered that within days of making the deposits, Barker had withdrawn the money in cash.

Dardis did not know who Dahlberg was. But he had subpoenaed Barker's phone records, which revealed calls to a lawyer for the CRP and to one E. Howard Hunt, a White House consultant who helped plot the Bay of Pigs invasion.

Meanwhile, a New York Times reporter named Walter Rugaber, tipped off by Dardis' boss Gerstein, wrote about the phone calls between Barker and the Nixon campaign committee. The Washington Post's Bernstein learned from a phone company source that Gerstein had subpoenaed Barker's phone records and flew to Miami on July 31, 1972, to catch up with *The Times*.



GERSTEIN

That day, Rugaber wrote a front-page story about the \$89,000 deposit from a Mexican bank into Barker's account, but made no mention of the \$25,000 check.

Dardis said he believed the key lay in the \$25,000 Dahlberg check, but that Rugaber, who flew to Mexico City to investigate the \$89,000, ignored him. Rugaber said Dardis proffered no such advice, but readily concedes that he should have tracked down Dahlberg instead.

"I'm afraid he's misremembering it, I dealt mainly with Gerstein," said Rugaber, who is on the board of advisors with the Center of Regional Studies at Virginia Tech.

Bernstein showed up at Gerstein and Dardis' offices in downtown Miami. He finally met with Dardis, who found the young reporter arrogant, impatient and slovenly.

"He was filthy, seedy looking, with long greasy hair," Dardis recalled. Regardless, the investigator pulled out the checks for Bernstein, who vowed not to reveal his office as the source. Bernstein relayed Dahlberg's name to Woodward, who soon learned that Dahlberg was a major Republican fundraiser, and had given the \$25,000 check to the Nixon reelection campaign.

There it was, the first crucial connection between the robbers and the nation's chief.

In a 1997 interview with *The Herald*, Woodward called the Dahlberg check the "connective tissue" linking the Watergate burglars with the Nixon campaign. Barry Sussman, a Washington Post city editor who worked with Bernstein and Woodward, wrote in his 1974 book, *The Great Cover Up*, that "without the work of Dardis and his cooperation with newspapermen, there might have been no Dahlberg check story." And without the Dahlberg check story, Sussman wrote, there might have been "little pressure exerted to force those who knew of the coverup to come forward."

But Dardis felt *All the President's Men*, the most famous account of Watergate,

depicted him as easily flustered, thick headed and evasive as well as a shabby dresser. Beatty's portrayal of him in the film only deepened his ire. "He made me look like a buffoon," Dardis said.

In 1973, Gerstein and Dardis successfully prosecuted Barker for misusing a public notary's seal when he cashed Dahlberg's check. The burglar was sentenced to a month in jail.

As it turned out, Dardis and Dahlberg, who was charged with no wrongdoing, shared a deeper connection. During World War II's Battle of the Bulge, Germans shot down Dahlberg, a flier, behind American lines. Dardis, a sergeant who won dozens of medals in the war, was nearby and rushed to help. Dahlberg mistook his rescuer for a Nazi and took aim with his gun,



DAHLBERG

prompting Dardis to yell, "I'm an American!" The two reconnected during Watergate, and Dahlberg dryly cracked that he should have shot Dardis when he had the chance.

In the late 1970s, Dardis went undercover to break up Miami drug rings, and in 1980, moved to upstate New York with his fourth wife, Barbara, and their two children, out of concern for their safety. He became an investigative reporter for *Sports Illustrated*, and in 1997, co-authored a book about the NBA. The couple, married now for 39 years, retired to Palm City outside Stuart eight years ago.

Still, Dardis remains haunted by the belief that popular history gave him the short shrift. He once considered suing the screenwriter of *All the President's Men*, William Goldman, but his lawyer advised against it.

The casting of Beatty still cuts him to the quick.

"I told him Robert Redford had already been taken," Barbara Dardis said.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT OF FLORIDA. IN AND FOR DADE COUNTY

CASE NO. 73-19490

MANUEL ARTIME, CLARA BARKER,  
JANET STURGIS, CELIA  
GONZALEZ and THANIA (SYLVIA)  
AMENGUAL,

GENERAL JURISDICTION DIVISION

Plaintiff s

-vs-

RICHARD E. GERSTEIN, as State  
Attorney for the Eleventh  
Judicial Circuit of Florida,  
and MARTIN DARDIS, an Investigator  
for The State Attorney for the  
Eleventh Judicial Circuit of  
Florida

Defendant s

CIVIL ACTION  
SUMMONS

THE STATE OF FLORIDA:

To All and Singular the Sheriffs of the State:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the complaint or petition  
in this action on defendant:

FILED FOR RECORD  
73 SEP 4 AM '73  
ELEVENTH JUDICIAL CIRCUIT  
CLERK OF COURT  
DADE CO. FLA.

RICHARD E. GERSTEIN  
State Attorney's Office  
1351 NW 12th Street  
Miami, Florida

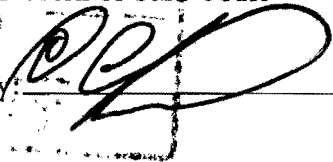
MARTIN DARDIS  
c/o State Attorney's Office  
1351 NW 12th Street  
Miami, Florida

Each defendant is required to serve written defenses to the complaint or petition on Plaintiff's  
attorney, to wit: **ELLIS RUBIN LAW OFFICES**  
whose address is: **407 Lincoln Road-Suite 11-A, Miami Beach, Florida 33139**  
**Tel: 532-4477**

within 20 days after service of this summons on that defendant, exclusive of the day of service,  
and to file the original of the defenses with the Clerk of this Court either before service on  
Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be  
entered against that defendant for the relief demanded in the complaint or petition.

WITNESS my hand and the seal of said Court on AUG 9 1973, 19\_\_

Richard P. Brinker,  
as Clerk of said Court

by: 

as Deputy Clerk

(Court Seal)

because he was looking for an apartment." Mrs. Troesch said she helped Roslin with

some old pictures and a Social Security card with the date Dec. 15, 1936, on it.

# Halt Sturgis Statements By Government, Rubin Asks

By DARRELL EILAND  
Herald Staff Writer

Frank Sturgis is not a smuggler of stolen automobiles, he is an honest man who served his country faithfully, attorney Ellis Rubin said at a news conference Tuesday.

Rubin and Mrs. Sturgis held the conference in the living room of the attorney's Miami Beach home. Sturgis is now in jail for his part in the Watergate burglary of Democratic National Headquarters last year.

Rubin called the conference to announce he intends

to file motions "to compel the U.S. government to try the case against my client in court and not in the newspapers and to silence those who would convict him publicly before he has had a trial."

The attorney said he plans to subpoena records and officials of the Central Intelligence Agency to show Sturgis was working for the CIA in Latin America.

Rubin said the conference was prompted by a story which appeared in the Sunday Miami Herald in which the government's chief witness told reporters that Sturgis participated in an

operation to smuggle stolen cars, loaded with guns, into Mexico.

Mrs. Sturgis said she feels her husband will be vindicated. "God is on my side because my husband is innocent," she said.

Sturgis is due to be arraigned on charges of conspiracy to smuggle and transporting stolen automobiles before Judge C. Clyde Atkins at 2 p.m. Sept. 10.

Sturgis will plead innocent, Rubin said. "The only thing he is guilty of is perhaps loving his country, not wisely, but too well." The quote is a paraphrase of Shakespeare's Othello who killed his wife and then asked that he be remembered as "a man who loved not wisely but too well."

Sturgis, Rubin said, was an employe of the Central Intelligence Agency from 1959 to 1968 and in 1968 participated in operations in the Cuba-Venezuela-Mexico area, "in which only those at the higher echelons of operation were aware of the ultimate goals."

Sturgis was especially active, Rubin said in a movement "to bring pressures to bear and cause an exchange of political prisoners involving the Cuban and Venezuelan Jewish communities."

Rubin said he plans to subpoena records of the Central Intelligence Agency and the National Defense Agency and also to demand that officials of the two agencies appear to give testimony.

He said he found it "extremely strange" that the federal government waited five years, almost to the eve of the expiration of the statute of limitations, before filing the auto smuggling charges.

He said he also thought it was strange that the government's chief witness had given an exclusive interview to The Herald when in cases such as the trial of the Gainesville Eight the government told its chief witness to keep quiet.

"The government obviously looks with approval on this information getting out," Rubin said.



Douglas Harringer  
... to New York?



Jeffery Boccaccio  
... walked out

## Trusties Escape In Police Car

Two live-in jail trustees walked out of Metro's West Dade sub-station Tuesday and made their getaway in an unmarked police car that was parked out front, police said.

The trustees, Douglas Harringer, 19, and Jeffery Boccaccio, 17, were on loan to the sub-station as clean-up men from the Dade County Treatment and Training Center.

Harringer and Boccaccio who were serving a year's sentence each, were due to be released in December. They are believed headed for New York, police said.

Officers discovered the break when a jailer went to awaken them for a clean-up detail and the two were not in their cells or any other part of the station, police said.

Harringer, who listed his last address as 8034 SW 104th St., was serving an extended sentence for violation of probation. He was originally jailed on a breaking and entering charge, police said.

Boccaccio, whose address was listed as 1500 NE 120th St. Terr. was doing time for a possession of barbiturates charge.

"They were trustees and trustees are not locked in. They probably went out when things were slack and no one noticed they were gone," Metro West police said.

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—Herald Staff Photo by JOE ELBERT

**Attorney Ellis Rubin (Right), Clients Hold Press Conference**  
... from left, Mrs. Sturgis, Mrs. Barker, Mrs. Gonzales, Fernandez

## Watergate-Payment Informants Plan To Sue Gerstein for Releasing Facts

By DOUG CLIFTON  
Herald Staff Writer

Five persons who told State Attorney Richard Gerstein about mysterious payments made to the families of the four Miami Watergate burglars said Saturday they plan to sue Gerstein for releasing the information to the press.

The five include Mrs. Bernard Barker, Mrs. Virgilio Gonzales, Mrs. Frank Sturgis, Miss Sylvia Campos, fiancée of Eugenio Martinez, and Manuel Artime, the businessman who

said he distributed \$21,000 to the four families.

All are represented by Miami Beach attorney Ellis Rubin who got an injunction against Gerstein last month to prevent him from releasing testimony about Pablo Fernandez, a government witness against the Vietnam Veterans Against the War.

**RUBIN CHARGED** that Gerstein's release of testimony given by Artime and the four women violated the spirit of the Fernandez injunction.

Gerstein, in New York at a

prosecutors' seminar hosted by the Practising Law Institute, was not available for comment.

Rubin claimed that Gerstein's release of the testimony given by the five in sworn testimony violates their right to privacy and could prejudice the rights of the four convicted burglars.

Artime had told Gerstein he received \$12,000 early this year from convicted Watergate conspirator Howard Hunt. He said he later got a total of \$9,000 in the mail in three plain white

envelopes, two of which bore insufficient postage.

Artime said the money was distributed to the women and one of the convicted burglar's attorneys. The four women subsequently gave Gerstein sworn testimony confirming that they received the amounts Artime said he'd given them.

Rubin said he will ask \$250,000 in damages for each of his clients in a Federal Court suit. He will also seek an injunction against Gerstein to prevent further leaks of sworn testimony, he said.

# Give Ellsberg Findings to CIA, Hunt, Liddy Reportedly Told

By SANFORD J. UNGAR  
Washington Post Service

WASHINGTON — When Watergate conspirators E. Howard Hunt and G. Gordon Liddy organized a burglary at the office of Daniel Ellsberg's psychiatrist, they were told to provide material for the Central Intelligence Agency, among others, according to the latest private account by former presidential adviser John D. Ehrlichman.

At the request of David Young, then an aide to the National Security Council, Hunt and Liddy were to develop information for the CIA's use in preparing a "psychological profile" of Ellsberg, Ehrlichman said.

That version is in direct conflict with sworn grand jury testimony by Hunt, who has said that the CIA was called in to prepare the profile only after the burglary failed to produce useful information.

CIA officials have also said that, although they provided Hunt and Liddy with disguises and other "technical assistance," they had no interest or involvement in the burglary.

EHRlichman's account, provided recently to a Washington Post reporter, also indicates, as President Nixon has previously, that the special supplementary White House investigation of Ellsberg was launched because of confusion and alarm over the leak of the Pentagon papers.

(Ellsberg has long acknowledged that he was responsible for the leak. The



**E. Howard Hunt**  
... worked with Liddy

case against him on charges of conspiracy, espionage and theft of government property was dropped in May, after revelation of the burglary and other government misconduct directed against him.)

A Los Angeles County grand jury has been investigating Ehrlichman and those who worked under him on the White House "plumbers" squad in connection with the burglary.

Ehrlichman has insisted that he had no advance knowledge of the burglary and that he chastised Hunt and Liddy when he learned about it — although he did not report it to the appropriate authorities.

According to Ehrlichman's account, the White House was dissatisfied with the FBI's investigation of Ellsberg at the time of the Pentagon papers leak and suspected that J. Edgar Hoover, then director of the bureau, was holding back because of his friendship with Ellsberg's father-in-law,



**Richard Kleindienst**  
... no comment

millionaire toy manufacturer Louis Marx.

THAT SAME theme was stressed last week in the testimony of presidential aide Richard Moore before the Senate Watergate committee.

It has astonished and angered FBI officials who were connected with the bureau probe of Ellsberg, which was under way more than a year before the Pentagon papers were published.

Those who have inspected the bureau files on Ellsberg suggest that if anything, they are too complete, since they include almost day-by-day accounts of his social life, telephone calls and recreational pursuits.

FBI sources have also said that Hoover could not have been constrained by his friendship with Marx, because it was widely known that the toy manufacturer had little to do with — and intensely disliked — his son-in-law.

Ehrlichman's version of events also sheds new light

on his meetings during the Pentagon papers trial with the presiding judge, W. Matt Byrne Jr., who was then a prime candidate to be named permanent director of the FBI.

THE FORMER presidential aide insists, for example, that his approach to Byrne in mid-trial was endorsed by then Attorney General Richard Kleindienst and that the judge felt there was nothing improper about a general discussion of his possible appointment to the FBI post.

In fact, according to Ehrlichman, it was Byrne who requested a second meeting with the Nixon aide and offered to return to San Clemente, Calif., where the two men had met the first time.

The second meeting was instead held in a public park in Santa Monica near Ehrlichman's mother's home. That site was selected, according to Ehrlichman's account, because the presidential aide feared that Byrne would be seen visiting the Nixon compound in San Clemente.

KLEINDIENST could not be reached for comment on Ehrlichman's assertion that he had approved the approach to Byrne about the FBI job.

The former attorney general has previously said, however, that he thought it was improper for Byrne and Ehrlichman to have such discussions while the trial was still in progress.

Byrne, through his secretary, declined to discuss Ehrlichman's recollection about the meetings as he has previously.



IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490

MANUEL ARTIME, CLARA BARKER,  
JANET STURGIS, CELIA  
GONZALEZ and THANIA (SYLVIA)  
AMENGUAL,

Plaintiffs,

-vs-

MOTION TO TRANSFER

RICHARD E. GERSTEIN, as State  
Attorney for the Eleventh  
Judicial Circuit of Florida,  
and MARTIN DARDIS, an Investi-  
gator for the State Attorney  
for the Eleventh Judicial  
Circuit of Florida,

Defendants.

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DADE CO. FLA.  
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The Plaintiffs, by and through their undersigned attorney,  
and pursuant to Local Circuit Court Rule 10, moves this Court  
to transfer this cause to the Division of Circuit Judge Jack  
Falk on the following grounds:

1. Judge Falk was the trial Judge in Dade Circuit Court  
Case No. 73-14213, in that case, the identical Defendants were  
named and the identical issues to the case at bar were argued  
and ruled on by Judge Falk after a two day non-jury trial.

2. In Case No. 73-14213, an injunction was granted and  
issued against these same identical defendants; the injunction  
was on behalf of only one particular Plaintiff in Case No.  
73-14213, but the principles of law cited are applicable to all  
citizens of the State of Florida. Therefore, a Transfer to  
Judge Falk would save judicial labor and re-argument of complex  
and lengthy legal issues and principles.

3. No harm or prejudice or bias would come to the  
Defendants herein if such a transfer, in the interests of  
Justice and saving of judicial labor was to be Ordered.

WHEREFORE, Plaintiffs pray that this cause be transferred

to the Division of Judge Jack Falk forthwith.

ELLIS RUBIN LAW OFFICES  
Attorney for Plaintiffs  
407 Lincoln Road-Suite 11-A  
Miami Beach, Florida 33139

BY: *Ellis S. Rubin*  
ELLIS S. RUBIN

I HEREBY CERTIFY that a true copy of the foregoing Motion to Transfer was hand delivered to JON I. GORDON, ESQ., Assistant County Attorney, 1626 Dade County Courthouse, Miami, Florida, this 16th day of August, 1973.

*Ellis S. Rubin*  
ELLIS S. RUBIN

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490

MANUEL ARTIME, CLARA BARKER,  
JANET STURGIS, CELIA :  
GONZALEZ and THANIA (SYLVIA) :  
AMENGUAL, :

Plaintiffs, :

-vs- :

RICHARD E. GERSTEIN, as State :  
Attorney for the Eleventh :  
Judicial Circuit of Florida, :  
and MARTIN DARDIS, an Investi- :  
gator for The State Attorney :  
for the Eleventh Judicial :  
Circuit of Florida, :

Defendants. :

NOTICE OF HEARING

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TO: JON I. GORDON, ESQ.  
Assistant County Attorney  
1626 Dade County Courthouse  
Miami, Florida

PLEASE TAKE NOTICE that a hearing on Plaintiffs' Motion to Transfer in the above-styled cause will be heard before the Honorable Harvie S. DuVal (Adm. Judge) of the above Court, in his Chambers at the Dade County Court House, Miami, Florida, on Thursday, August 23, 1973, at 9:30 A. M., or as soon thereafter as the matter may be heard.

ELLIS RUBIN LAW OFFICES  
Attorney for Plaintiffs  
407 Lincoln Road-Suite 11-A  
Miami Beach, Florida 33139

BY: Ellis S. Rubin  
ELLIS S. RUBIN

I HEREBY CERTIFY that a true copy of the foregoing Notice of Hearing was mailed to the above named addressee this 16th day of August, 1973.

Ellis S. Rubin  
ELLIS S. RUBIN

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490

MANUEL ARTIME, CLARA BARKER, :  
JANET STURGIS, CELIA :  
GONZALEZ, and THANIA (SYLVIA) :  
AMENGUAL, :

Plaintiffs, :

vs. :

RICHARD E. GERSTEIN, as State :  
Attorney for the Eleventh :  
Judicial Circuit of Florida, :  
and MARTIN DARDIS, an :  
Investigator for the State :  
Attorney for the Eleventh :  
Judicial Circuit of Florida, :

Defendants. :

ORDER

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THIS CAUSE having come on to be heard before me on Plaintiffs' Motion to Transfer, and the Court having heard arguments of counsel and being fully apprised of the premises, it is hereby

ORDERED and ADJUDGED that said motion is denied.

DONE and ORDERED in Chambers at Miami, Dade County, Florida, this 23<sup>rd</sup> day of August, 1973.

*Harvie S. Duval*  
HARVIE S. DUVAL  
Adm. Judge

Copies furnished to:

Stanley B. Price  
Assistant County Attorney  
1626 Dade County Courthouse  
Miami, Florida 33130

Ellis S. Rubin, Esquire  
407 Lincoln Road  
Suite 11-A  
Miami Beach, Florida 33139

COPIES OF THIS ORDER WERE  
MAILED TO THE  
CLERK OF THE CIRCUIT COURT  
BY *[Signature]*

FILED FOR RECORD

1973 SEP 20 PM 4:24

RICHARD P. BRINKER  
CLERK CIRCUIT COURT  
DADE CO. FLA.

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490 (I.G. Christie)

MANUEL ARTIME, CLARA BARKER,  
JANET STURGIS, CELIA  
GONZALEZ, and THANIA (SYLVIA)  
AMENGUAL,

Plaintiffs,

-vs-

RICHARD E. GERSTEIN, as State  
Attorney for the 11th Judicial  
Circuit of Florida, and  
MARTIN DARDIS, an Investigator  
for the State Attorney of the  
11th Judicial Circuit of  
Florida,

Defendants.

PLAINTIFFS' MEMORANDUM  
OF LAW

The applicable Statute and the cases cited by the Defendants in their Memorandum are accepted by the Plaintiffs as current and valid statements of the Rules and the Law in Florida applicable to the case at Bar.

In June of 1973, Dade County Circuit Court Case No. 73-14213 was filed on behalf of a citizen of Dade County who had been subpoenaed to the State Attorney's Office pursuant to Section 27.04, Florida Statutes, for questioning. The witness was not sworn; however, as a result thereof, a major portion of the witness's answers to questions posed by MARTIN DARDIS, an Investigator for the State Attorney, appeared on the pages of The Miami Herald, and thus were widely circulated throughout the State of Florida.

On the very day of the Final Hearing of the Dade County Circuit Court Case No. 73-14213, whereby Circuit Court Judge Jack Falk Ordered "additional guidelines. . .to assist the State Attorney in his endeavor to safe-guard the confidentiality of information acquired by him while acting in his capacity as a "one-man Grand Jury"; and wherein the Circuit Court further Ordered that "if the State Attorney or one of his assistants again

employ Florida Statute 27.04 for the purpose of requiring" that Plaintiff "to appear before him and give testimony," then such statements "in the past or in the future whether reduced to writing or otherwise, shall be governed by" certain rules of confidentiality; on that very day, one of the Plaintiffs at Bar, MANUEL ARTIME, was being interrogated by the same MARTIN DARDIS pursuant to subpoena issued by authority of Section 27.04, Florida Statutes. Again, Mr. Artime was not sworn, either.

The other Plaintiffs were also interrogated pursuant to Section 27.04, Florida Statutes but were not subpoenaed until July 12, 1973. Unlike MANUEL ARTIME, they were sworn. However, the testimony of all the Plaintiffs at Bar was again released to the press by the Defendants not only in violation of their personal rights and the law as reflected in Davis v. Bank of Clearwater, 190 So. 2d 789, but also in violation of the spirit of the Final Judgment and Permanent Injunction issued against both Defendants at Bar by Judge Falk in Circuit Court Case No. 73-14213 less than one (1) month before.

The Defendants now appear before this Court and claim that the aforesaid Judgment and Injunction only applies to that one Plaintiff, PABLO FERNANDEZ, in case number 73-14213. They also seek to negate this action at Bar as a class action and allege that it should only apply to someone presently under subpoena.

Plaintiffs would respectfully show that it is the activity of the Defendants themselves that has brought about the suit at Bar requiring it to be applied as a class action. According to the Defendants, any citizen presently under subpoena must bring his own individual Complaint into Court for relief. In this way, the Defendants could continue to violate any injunctions issued on behalf of other individuals. To sustain this theory for the Defendants would be to allow the State Attorney to do what prior cases and common decency requires him not to do.

According to the Defendants' own cases cited in their Memorandum, certainly this question of the release of sworn or unsworn testimony by a "one-man Grand Jury" to the press media not engaged in law enforcement pending Information or Indictment is "one of common or general interest" to every citizen of the State of Florida. . .that is the class Plaintiffs represent. The fact that they must come to Court for the same identical relief granted to PABLO FERNANDEZ in a prior case in the same Circuit proves the necessity for this case to be a class action. All of the requisites of a class suit are present at Bar. Plaintiffs have shown the required "circumstances surrounding the case." Certainly, the interest of these Plaintiffs is co-extensive with the interests of every citizen of Florida in obtaining the relief sought. There is "a common right of relief based on the same essential facts."

During oral argument on the Defendants' Motion to Dismiss heard by this Court, one of the Defendants, RICHARD E. GERSTEIN, was allowed to comment upon the legal arguments being made by respective counsel. Mr. Gerstein argued, and so it is the thrust of his logic, that the public has a right to know everything about Watergate and that as long as he is State Attorney, he will give them that knowledge. While Watergate does command headlines, Mr. Gerstein completely overlooks his duty and responsibility and even his oath to uphold the Constitution of Florida and the United States to protect not only society, but the rights of every individual to due process of law, equal protection under the law, and his right or her right to privacy. As Judge Falk reflected on Page 3 of The Excerpt of Proceedings of June 15, 1973, wherein he rendered his decision in the PABLO FERNANDEZ case, "The question of practicality, efficiency, versus Constitutional protections, and protections afforded the citizens of this Country--it comes down to one versus the other. I don't think there is much question as to which should prevail. In a country that is governed by law, the law has to be followed by the average person, the public officials and all people. We are a nation of laws and the law has to be followed."

Plaintiffs cannot accept the Defendants' definitions of the two sub-classes the Plaintiffs are supposed to be confined to as reflected at the top of Page 3 of their Memorandum, to-wit:

1. those individuals under subpoena to the State Attorney's Office and
2. those individuals not under subpoena to the State Attorney's Office.

They might as well have said that the two classes of people these Plaintiffs represent are those who agree with the State Attorney and those who do not agree with the State Attorney. It is clear beyond conjecture that the class defined and represented by the Plaintiffs at Bar are all citizens of the State who, like these Plaintiffs, have been or can be subpoenaed under color of law to appear at the Office of a "one-man Grand Jury" within two (2) hours of service of the Subpoena to answer questions that may or may not tend to incriminate them. . .that may or may not lead to charges being filed against them. . .but that do not become the public's business unless and until an Information or Indictment is filed against them, and all of this being done by the "one man Grand Jury" without advising the witness of his right to remain silent, to be advised by counsel of his own choice, that anything testified to can be used against him, and that if the witness cannot afford private counsel, then one will be provided at State's expense.

By facilitating the publishing of the testimony of the Plaintiffs, the State Attorney has already violated the law and their rights. The Plaintiffs seek to enjoin further damage to the law and to their rights. If Defendants are correct in their assertion that there is no justiciable controversy and therefore this suit should be dismissed, why do they continue to release portions of testimony to the press from these Plaintiffs and other witnesses subpoenaed by them via Section 27.04, Florida Statutes? If there is no need for an Injunction, because, in their words, the alleged wrong has already been done, why did these Defendants deliberately repeat the very actions that resulted in a Permanent



Injunction in Circuit Court Case No. 73-14213? Incidentally, these same grounds were argued in that case in an attempt to Dismiss that Complaint. In the Final Judgment, Judge Falk ruled that the Complaint "states a cause of action for declaratory relief. . ." and Judge Falk did issue a Permanent Injunction against these same Defendants after the Plaintiff there had already testified and had already been subjected to the publication of his testimony on the frontpage of the daily newspaper. This, in accord with Section 86.011(2) Florida Statutes which allows relief for future wrongs by coercive Orders.

Certainly, the need for declarations of law and a permanent injunction which would apply to every citizen of Florida has been brought about by the activity of the Defendants alone. Again, as Judge Falk reflected on Pages 2 and 6 of his ruling:

"This involves Mr. Fernandez and all citizens, their right not to answer questions, the right to remain silent.

\* \* \* \*

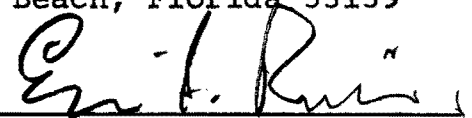
Now we go one step further to determine whether a temporary injunction should be issued to prevent sworn or unsworn testimony which is obtained pursuant to a subpoena, can be turned over to other sources. . . I think on that basis the petitioner would be entitled to an Injunction preventing the turning over, not only the sworn testimony obtained pursuant to a Subpoena but also the unsworn testimony or unsworn statements made unless it is turned over to a Grand Jury or other investigating officers or after an Indictment or Information is filed against the individual."

This is a class action. . .there is a justiciable controversy. . . and there is need of injunctive relief as reflected in the utter disregard exhibited by the Defendants since entry, unappealed, of the Final Judgment and Permanent Injunction issued by Judge Falk which was supposed to cure and guide the Defendants from future indiscretions, but which apparently did not.

Respectfully submitted,

ELLIS RUBIN LAW OFFICES  
Attorney for Plaintiffs  
407 Lincoln Road-Suite 11-A  
Miami Beach, Florida 33139

BY:

  
ELLIS S. RUBIN

I HEREBY CERTIFY that a true copy of the foregoing  
Plaintiffs' Memorandum of Law was mailed to Stanley B. Price, Esq.,  
Assistant County Attorney, 1626 Dade County Courthouse, Miami,  
Florida 33130, this 20 day of September, 1973.



---

ELLIS S. RUBIN

73-19490

September 14, 1973

Ellis Rubin, Esquire  
407 Lincoln Road - Suite 11-A  
Miami Beach, Florida 33139

Re: Arttime et al. v. Gerstein et al.

Dear Mr. Rubin:

Please be advised that I have been informed by the secretary to Judge Christie that the continuance of your Motion for a Temporary Injunction has been scheduled for Friday, October 12, 1973 at 2:30 P. M.

Very truly yours,

  
Stanley B. Price  
Assistant County Attorney

SBP/erm

CC: Honorable Irwin Christie

73 SEP 13 AM 9:33

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

MANUEL ARTIME, CLARA BARKER, JANET STURGIS, CELIA GONZALEZ, and THANIA (SYLVIA) AMENGUAL,

CASE NO. 73-19490 (I.J. Christie)

GENERAL JURISDICTION DIVISION

Plaintiff s

SUBPOENA

DUCES TECUM

-vs-

RICHARD E. GERSTEIN, As State Attorney for the 11th Judicial Circuit of Florida, and MARTIN DARDIS, an Investigator for the State Attorney of the 11th Judicial Circuit. Defendant s

THE STATE OF FLORIDA:

TO: MARTIN DARDIS State Attorney's Office 1351 NW 12th Street Miami, Florida

YOU ARE HEREBY COMMANDED to appear before the Honorable IRWIN G. CHRISTIE

Judge of said Court, at the Dade County

Courthouse in Miami, Florida, on Thursday, Sept. 13, 1973,

at 2:00 P.M. to testify in the above styled cause and have with you at said time and place the following:

The transcription or original notes of the interrogation of MANUEL ARTIME, CLARA BARKER, JANET STURGIS, CELIA GONZALEZ and THANIA (SYLVIA) AMENGUAL, taken during the months of June and/or July, 1973 in the Office of the State Attorney.

I, Melvin Bratter, perfomed service of the within subpoena by delivering to and leaving with Jackie Davidson, secretary of Martin Dardis, at his request, a copy of this subpoena on 9/11/73 at 2:30 P.M. Melvin Bratter

If you fail to appear, you may be in contempt of Court.

You are subpoenaed to appear by the following attorneys and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

WITNESS my hand and the seal of said Court on SEP 10 1973, 19

RICHARD P. BRINKER Clerk Circuit Court

ELLIS RUBIN LAW OFFICES

By: [Signature] as Deputy Clerk

Attorney for PLAINTIFFS

407 Lincoln Road-Suite 11-A Address Miami Beach, Florida 33139 Tel: 532-4477

(Court Seal)

FILE FOR RECORD

'73 SEP 7 PM 4:33

IRVING F. BRINKER  
ELEVENTH JUDICIAL CIRCUIT COURT  
DADE CO. FLA.

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490

MANUEL ARTIME, CLARA BARKER,  
JANET STURGIS, CELIA  
GONZALEZ, and THANIA (SYLVIA)  
AMENGUAL,

Plaintiffs,

-vs-

RICHARD E. GERSTEIN, as State  
Attorney for the Eleventh  
Judicial Circuit of Florida,  
and MARTIN DARDIS, an Investi-  
gator for the State Attorney  
for the Eleventh Judicial  
Circuit of Florida,

Defendants.

NOTICE OF HEARING

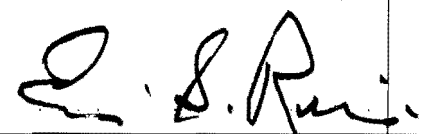
-----  
TO: STANLEY B. PRICE, ESQ.  
Assistant County Attorney  
1626 Dade County Courthouse  
Miami, Florida

PLEASE TAKE NOTICE that a hearing on Plaintiffs'  
Motion for Temporary Injunction in the above-styled cause  
will be heard before the Honorable Irwin G. Christie, Judge  
of the above Court, in his Chambers at the Dade County  
Courthouse, Miami, Florida, on Thursday, September 13, 1973,  
at 2:00 P. M., or as soon thereafter as counsel can be heard.

ELLIS RUBIN LAW OFFICES  
Attorney for Plaintiffs  
407 Lincoln Road-Suite 11-A  
Miami Beach, Florida 33139

BY:   
ELLIS S. RUBIN

I HEREBY CERTIFY that a true copy of the foregoing  
Notice of Hearing was mailed to the above-named addressee  
this 6th day of September, 1973.

  
ELLIS S. RUBIN

FILED FOR RECORD

73 SEP 10 PM 4 44

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND  
FOR DADE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION

RICHARD P. BRINKER  
CLERK CIRCUIT COURT  
DADE CO. FLA.

CASE NO. 73-19490

MANUEL ARTIME, CLARA BARKER,  
JANET STURGIS, CELIA GONZALEZ and  
THANIA (SYLVIA) AMENGUAL,  
Plaintiffs,

vs.

RICHARD E. GERSTEIN, as State Attorney  
for the Eleventh Judicial Circuit of Florida,  
and MARTIN DARDIS, an Investigator for the  
State Attorney for the Eleventh Judicial  
Circuit of Florida,  
Defendants.

NOTICE OF HEARING

\_\_\_\_\_ Motion Calendar

  X   Special Appointment

TO: Ellis S. Rubin, Esquire  
704 Lincoln Road - Suite 11-A  
Miami Beach, Florida 33139

PLEASE TAKE NOTICE that Defendants' Motion to Dismiss  
will be heard  
before the Honorable Irwin G. Christie, one of the  
Judges of the above Court, in his Chambers at the Dade County Courthouse,  
Miami, Florida, on Thursday, September 13th at 2:00 o'clock  
P.M., or as soon thereafter as the matter may be heard.

STUART SIMON  
County Attorney  
1626 Dade County Courthouse  
Miami, Florida 33130  
(305) 377-5351

By: Stanley B. Price  
Stanley B. Price  
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was  
furnished by ~~(hand)~~ (mail) to the above addressee, this 10th day of  
September, 1973.

Stanley B. Price  
Assistant County Attorney

IN THE CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT OF FLORIDA, IN AND  
FOR DADE COUNTY

CASE NO. 73-19490 (I.J. Christie)

MANUEL ARTIME, CLARA BARKER,  
JANET STURGIS, CELIA  
GONZALEZ, and THANIA (SYLVIA)  
AMENGUAL,

GENERAL JURISDICTION DIVISION

Plaintiff s

SUBPOENA

-vs-

DUCES TECUM

RICHARD E. GERSTEIN, As  
State Attorney for the 11th  
Judicial Circuit of Florida,  
and MARTIN DARDIS, an  
Investigator for the State  
Attorney, etc. Defendant s

FILED FOR RECORD  
73 SEP 11 PM 2:05  
RICHARD P. BRINKER  
CLERK CIRCUIT COURT  
DADE CO. FLA.

THE STATE OF FLORIDA:

TO: RICHARD E. GERSTEIN, ESQ.  
State Attorney for the 11th Judicial  
Circuit of Florida  
1351 NW 12th Street, Miami, Florida

YOU ARE HEREBY COMMANDED to appear before the Honorable IRWIN G. CHRISTIE

\_\_\_\_\_ Judge of said Court, at the \_\_\_\_\_ Dade \_\_\_\_\_ County

Courthouse in Miami, Florida, on Thursday, Sept. 13, 19 73,

at 2:00P.M. to testify in the above styled cause and have with you at said time and place the following:

The transcription or original notes of the  
interrogation of MANUEL ARTIME, CLARA BARKER,  
JANET STURGIS, CELIA GONZALEZ and THANIA  
(SYLVIA) AMENGUAL, taken during the months  
of June and/or July, 1973 in the Office of  
The State Attorney.

*I, Martin Dardis, reported service of the within  
subpoena Ducus Tecum by delivering to and leaving a copy  
with MR. JOE DURANT, ASST. STATE'S ATTY, who at his request  
accepted service for and on behalf of Richard E. Gerstein at 1:15 AM  
on Tuesday 9/11/73.*

If you fail to appear, you may be in contempt of Court.

You are subpoenaed to appear by the following attorneys and unless excused from this subpoena  
by these attorneys or the Court, you shall respond to this subpoena as directed.

WITNESS my hand and the seal of said Court on SEP 10 1973, 19 \_\_\_\_\_.

*Ellis Rubin*  
ELLIS RUBIN LAW OFFICES

RICHARD P. BRINKER  
Clerk Circuit Court

By *J. Sweeney*  
as Deputy Clerk

Attorney for PLAINTIFFS

407 Lincoln Road-Suite 11-A  
Address Miami Beach, Florida 33139  
Tel: 532-4477

(Court Seal)

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT OF FLORIDA IN AND FOR  
DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490 (Judge I.G. Christie)

MANUEL ARTIME, CLARA BARKER,  
JANET STURGIS, CELIA GONZALEZ, :  
and THANIA (SYLVIA) AMENGUAL, :

Plaintiffs, :

vs. :

ADDENDUM TO DEFENDANTS'  
MEMORANDA OF LAW

RICHARD E. GERSTEIN, as State  
Attorney for the 11th Judicial :  
Circuit of Florida, and Martin :  
Dardis, an Investigator for the :  
State Attorney of the 11th Judicial :  
Circuit of Florida, :

Defendants. :

INTRODUCTION

Pursuant to a specific request of this Honorable Court on October 12, 1973,  
this Memorandum of Law is offered in support of the Defendants' Motion to Dismiss.  
This Memorandum will address itself solely to the issue as to whether the State  
Attorney for the Eleventh Judicial Circuit for the State of Florida is required  
to maintain total secrecy as to information acquired pursuant to Section 27.04  
of the Florida Statutes.

APPLICABLE STATUTE

"27.04      Summoning and examining witnesses for state

The state attorney shall have summoned all witnesses  
required on behalf of the state; and he is allowed the  
process of his court to summon witnesses from throughout  
the state to appear before him in or out of term time  
at such convenient places in the state attorney's judicial  
circuit and at such convenient times as may be designated  
in the summons, to testify before him as to any violation of  
the criminal law upon which they may be interrogated, and  
he is empowered to administer oaths to all witnesses summoned  
to testify by the process of his court or who may voluntarily  
appear before him to testify as to any violation or violations  
of the criminal law."



## ARGUMENT

The role of the State Attorney can best be described by the following analysis contained in Imparato vs. Spicola, (Fla.App. 1970), 238 So2d 503, 506:

"Concededly, our Florida Constitution and Statutes give to State Attorneys important and responsible powers and duties. F.S. Section 27.04 F.S.A. provides that the State Attorney 'shall have summoned all witnesses required on behalf of the state' in a trial or official investigation in which he is involved. He is also 'allowed the process of his court to summon witnesses \* \* \* to testify before him as to any violation of the criminal law upon which they may be interrogated \* \* \*'. We agree thoroughly with everything said by the 4th District Court in State ex rel. Martin vs. Mitchell, Fla.App. 1966, 188 So.2d 684, with respect to the statutory and common law powers of the State Attorney."

"He has been loosely referred to many times as a 'one-man grand jury'. And he is truly that. He is the investigatory and accusatory arm of our judicial system of government, subject only to the limitations imposed by the Constitution, the common law, and the statutes, for the protection of individual rights and to safeguard against possible abuses of the far-reaching powers so confided." (emphasis added)

As such, the State Attorney, possessing specific inherent powers of his office, is limited solely by express constitutional and statutory limitations. As to the right of issuance of a subpoena, "the State Attorney is answerable only to himself and his conscience." Imparato, supra at 506.

Secrecy of proceedings are important safeguards which are expressly created by the legislature. The foremost example of secret proceedings is illustrated in F.S. 905.24.

"Proceedings of grand jury to be kept secret.--Grand jury proceedings are secret, and a grand juror shall not disclose the nature or substance of the deliberations or vote of the grand jury. "

It is a policy of the law to shield proceedings of a grand jury from public scrutiny. Clein vs. State, (1951), 52 So.2d 117. An examination of Chapter 27 of the Florida Statutes indicates complete silence on the part of the legislature to secret any of the proceedings instituted by the State Attorney. The legislature of the State

of Florida has never felt compelled to usurp the discretionary power of the State Attorney by imposing any restrictions in regard to the secrecy of information obtained pursuant to F.S. 27.04. It is a well accepted principal of statutory construction that exceptions will not be implied where the words of a statute are free from ambiguity. Martin v. Johnston (1955, Fla), 79 So.2d 419, cert.den. 350 U.S. 833, 100 L.ed. 745. The plaintiffs in this cause have misplaced their emphasis upon the term "one man grand jury" by attempting to make the secrecy provisions of the grand jury investigation analogous to the investigation pursuant to F.S. 27.04. Such an analogy was attempted before the Florida Supreme Court which rejected the concept and stated:

"We are nonplussed by repeated references to a 'secret' session in which the State Attorney was undertaking to ferret out crime and the perpetrators of it. True, investigations by a grand jury are secretly held because the statute requires that they be secret but there is slight if any analogy between such procedure and that followed under Section 27.04. Eventually in his brief the petitioner, himself, submits that there is clearly no analogy between such inquests before a prosecutor and before a grand jury citing Sections 905.17, 905.24 and 905.27, Florida Statutes, F.S.A." Gordon vs. Gerstein, (1966) 189 So.2d 873, 874. (emphasis added)

The Court further stated that:

"We know of no provision for secret inquisitional sessions by the State Attorney. This is the attitude of the Attorney General, respondent, who says in his brief that what he 'is empowered to do pursuant to Section 27.04 F.S.A. is not done in 'secret chambers'." 189 So.2d 873, 875.

The plaintiffs have relied almost exclusively upon the case of Davis v. Clearwater, (2nd District) 190 So.2d 789 and an Order of this Court in case number 73-14213. The Davis case is easily distinguishable in that the only mention of the limits upon the powers of the State Attorney is contained in a quote from a Circuit Court judge which is merely dicta to the issues of that case. Clearly, the Court will recognize that a holding of the Florida Supreme Court, which is totally ignored in a subsequent lower Court opinion, supercedes any holding of a lower tribunal. A District Court of Appeal is without power to overrule

a Supreme Court precedent. Hoffman vs. Jones (1973) 280 So.2d 431. Gordon vs. Gerstein, supra, clearly establishes that an investigation, pursuant to F.S. 27.04, is not held to the secrecy of a grand jury proceeding. The defendants are further compelled to illustrate to this Court that the holding in the Davis case upheld the power of the State Attorney to subpoena witnesses in regard to criminal investigations.

The Order of Judge Falk dated June 21, 1973, in Circuit Court case no. 73-14213 is applicable to only one individual and to a particular set of facts. If this was not so, that cause would be res judicata for every similar case. Obviously, this is not so and this point is aptly illustrated by:

1. Order of Judge Falk dated August 10, 1973, denying Petitioners' Peititon to Intervene. (Exhibit A)

2. Order of Judge DuVal dated August 23, 1973, denying Plaintiffs' Motion to Transfer. (Exhibit B)

The Plaintiffs have tried unsuccessfully by the same circuitous reasoning employed in the case sub judice to make Case No. 73-14213 res judicata as to all similar actions. It should be further noted that the principal of stare decisis is also not applicable in that when the exercise of discretion is at issue, each case must be determined by its own individual facts.

Where a statute imposes a duty on a public officer to accomplish a stated governmental purpose, it confers by implication every particular power necessary or proper to enable him to complete that duty. Re Advisory Opinion to the Governor, (Fla. 1952) 60 So.2d 285. The State Attorney is an elected public official (F.S. 27.01) entrusted with the function of prosecuting and defending on behalf of the State all suits, applications or motions, civil or criminal, in which the state is a party. (F.S. 27.02). As such, the State Attorney is answerable to the public and has a duty of keeping the electorate informed of all matters of vital concern, absent Constitutional and statutory prohibitions. It is the position of the State

Attorney, that in the absence of these prohibitions, he may exercise his discretion as to the release of information to the news media, so long as the exercise of his discretion does not impede his ability to prosecute criminal offenses. If, in his opinion, releasing information to the news media does not impede his duty as an elected public official, he has the additional obligation to keep the public informed. If he errs in the exercise of his discretion he will then answer to the electorate at the polling place. If this honorable Court reads into F.S. 27.04 a prohibition against the releasing of all information obtained to the news media it will in effect curtail the right of the public to know of criminal acts committed in Dade County as well as abridge the press in the exercise of their First Amendment rights. It is the duty of all citizens of the Community to come forward to give information regarding criminal offenses and this duty should not be subject to negotiation for the convenience of the citizen.

In conclusion, it is important to note that the State of Florida has promulgated laws enabling the government to operate in "the sunshine". The opening of any inroads which would operate to return the public to the dark could have grave consequences. We respectfully submit that this Court refrain from reading into a statute a prohibition that does not exist in that the present system is designed not for the benefit of the defendants, but for the benefit of the public whose interest it is that quasi-judicial officers should be at liberty to exercise their discretion with independence and without fear of consequences.

Respectfully submitted,

STUART SIMON  
Dade County Attorney  
1626 Dade County Courthouse  
Miami, Florida 33130  
Tel. 377-5351

By:   
Stanley B. Price  
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Addendum to Defendants' Memoranda of Law was served by mail on this 16<sup>th</sup> day of October, 1973, upon Ellis S. Rubin, Esquire, 407 Lincoln Road, Suite 11-A, Miami Beach, Florida.

  
Assistant County Attorney

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 73-14213 (Judge Falk)

PABLO FERNANDEZ,

Plaintiff,

-vs-

RICHARD E. GERSTEIN, as State  
Attorney for the Eleventh  
Judicial Circuit of Florida  
and MARTIN DARDIS, as Investi-  
gator for the State Attorney  
for the Eleventh Judicial  
Circuit of Florida,

Defendants.

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ORDER

RECEIVED

AUG 15 1973

COUNTY ATTORNEY

-----

THIS CAUSE having come on to be heard on the Petitions  
of MANUEL ARTIME, CLARA BARKER, JANET STURGIS, CELIA GONZALEZ,  
and THANIA (SYLVIA) AMENGUAL, for leave to intervene, and the  
Court having heard argument of counsel and being otherwise  
fully advised in the premises, it is

ORDERED AND ADJUDGED, that all Petitions for Leave  
to Intervene be, and the same are hereby denied without prejudice  
to the Petitioners to file a new and separate cause of action  
if they desire.

DONE AND ORDERED, at Miami, Dade County, Florida, this

10 day of August, 1973.

JACK A. FALK

\_\_\_\_\_  
CIRCUIT JUDGE

Copies Furnished Counsel

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490

MANUEL ARTIME, CLARA BARKER, :  
JANET STURGIS, CELIA :  
GONZALEZ, and THANIA (SYLVIA) :  
AMENGUAL, :

Plaintiffs, :

vs. :

RICHARD E. GERSTEIN, as State :  
Attorney for the Eleventh :  
Judicial Circuit of Florida, :  
and MARTIN DARDIS, an :  
Investigator for the State :  
Attorney for the Eleventh :  
Judicial Circuit of Florida, :

Defendants. :

ORDER

RECEIVED  
AUG 24 1973

COUNTY ATTORNEY

THIS CAUSE having come on to be heard before me on Plaintiffs' Motion to Transfer, and the Court having heard arguments of counsel and being fully apprised of the premises, it is hereby

ORDERED and ADJUDGED that said motion is denied.

DONE and ORDERED in Chambers at Miami, Dade County, Florida, this 23 day of August, 1973.

Harvie S. DuVal

HARVIE S. DUVAL  
Adm. Judge

Copies furnished to:

Stanley B. Price  
Assistant County Attorney  
1626 Dade County Courthouse  
Miami, Florida 33130

Ellis S. Rubin, Esquire  
407 Lincoln Road  
Suite 11-A  
Miami Beach, Florida 33139

EXHIBIT "B"

FILED FOR RECORD IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

AB 74 JUN 28 PM 4:38

CASE NO. 73-19490 (Judge I. Christie)

MANUEL ARTIME, CLARA BARKER, :  
JANET STURGIS, DANIELA FLA. :  
GONZALEZ, and THANIA :  
(SYLVIA) AMENGUAL, :

Plaintiffs, :

vs. :

DEFENDANTS' :  
MEMORANDUM :  
OF LAW

RICHARD E. GERSTEIN, as State :  
Attorney for the 11th Judicial :  
Circuit of Florida, and MARTIN :  
DARDIS, an Investigator for the :  
State Attorney of the 11th :  
Judicial Circuit, :

Defendants. :

APPLICABLE STATUTE

Florida Rules of Civil Procedure, Rule 1.220:

When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole.

STATEMENT OF THE LAW

This memorandum of law is submitted in support of the defendants' position that a class action does not lie and that the named plaintiffs herein do not constitute proper representation of any class of individuals who seek declaratory and injunctive relief.

The requisites of a class suit are (1) a question of common and general interest to all members of a class which is (2) so numerous as to make it impractical for each member to be brought before the Court and (3) fair and adequate representation of each member of the class by the person instituting the suit. City of Lakeland v. Chase Nat. Co., 159 Fla. 783, 32 So. 2d 833 (1947).



The defendants herein have illustrated to this honorable Court in oral argument that the plaintiffs do not fairly and adequately represent the class of which they claim to be a part. In the most definitive Court opinion as to class actions in the State of Florida, the Second District Court of Appeal stated:

"It is fundamental that an action is not a class suit merely because the plaintiff designates it as such in the complaint and uses the language of the rule. Whether it is or is not a class suit depends upon the circumstances surrounding the case. However, the complaint should allege facts showing the necessity for bringing the action as a class suit and the plaintiff's right to represent the class. The plaintiff should allege that he brings the suit on behalf of himself and others similarly situated. The complaint should allege the existence of a class, described with some degree of certainty, and that the members of the class are so numerous as to make it impracticable to bring them all before the court. It should be made clear that the plaintiff adequately represents the class, and whether a party adequately represents the persons on whose behalf he sues depends on the facts of the particular case. Generally, the interest of the plaintiff must be co-extensive with the interest of the other members of the class. A class suit is maintainable where the subject of the action presents a question of common or general interest, and where all members of the class have a similar interest in obtaining the relief sought. The common or general interest must be in the object of the action, in the result sought to be accomplished in the proceedings, or in the question involved in the action. There must be a common right of recovery based on the same essential facts." (Emphasis added) Port Royal, Inc. v. Conboy, 154 So. 2d 734, (1963); cited with approval, Brown v. Ellingson, 224 So. 2d 391 (1969)

In the case sub judice, the complaint is totally silent as to how the named plaintiffs adequately represent a class and, further, the language employed in the complaint does not even define the class the plaintiffs seek to represent. See, Winn-Dixie Stores, Inc. v. Sams, 281 So. 2d 47 (July 31, 1973). The complaint is equally deficient in that mere recital that "the class is so large" is insufficient to establish a class suit. City of Lakeland v. Chase Nat. Co., supra; Hendler v. Rogers House Condominium, Inc., 234 So. 2d 128 (1970). It should be further noted that a court will not take judicial notice of a number of individuals in a class. City of Lakeland v. Chase Nat. Co., supra; Brown v. Ellingson, 224 So. 2d 341 (1969).

To further illustrate the quandry of the plaintiffs' relationship to the class, let us define the class in terms of (1) those individuals under subpoena to the State Attorney's office and (2) those individuals not under subpoena to the State Attorney's office. As prelude to the discussion, it is important to note that there exists not a scintilla of evidence in the complaint that the named plaintiffs are presently under subpoena to the State Attorney. In the first illustration above, the class will fail in that the named plaintiffs are not part of the class they seek to represent. The named plaintiffs' interests are not co-extensive with the other members of the class and they cannot properly stand in the shoes of those seeking relief. The second illustration borders on absurdity in that since the complaint is seeking declaratory relief, a justiciable controversy between the parties must exist and absent said controversy any holding of this honorable Court would be merely advisory and have little or no legal effect. DeLoach v. Three Boys Properties, 205 So. 2d 362 (1967). Courts of law are precluded from rendering answers to questions which are merely academic, moot or theoretical. This point is further amplified by the following language:

'In the case of May v. Holley, Fla., 59 So. 2d 636, 639, we held that 'Before any proceeding for declaratory relief should be entertained it should be clearly made to appear that there is a bona fide, actual, present, practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts'. We also held that there must be some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter. The relief sought should not merely be legal advice by the courts or to give an answer to satisfy curiosity.' (Emphasis added) Bryant v. Gray, 70 So.2d 581, 584 (1954).

In the most recent pronouncement by the Third District Court of Appeal on the subject of class actions, the Court stated:

'Where a plaintiff asserts the right to litigate on behalf of a class of persons not joined with him in the action, the trial court is obliged to make a determination at an early stage of the trial as to whether the suit can properly proceed as a class action. . . In determining whether a class action may proceed, the trial court must not only confirm that the parties named actually represent the class, but must clearly demonstrate that the class encompasses the necessary community of interest.' Federated Dept. Stores, Inc. v. Pasco, 275 So. 2d 49 (1973); see also, Watnick v. Florida Commercial Banks, Inc., 275 So. 2d 278 (1973).

In the case at bar, the named plaintiffs cannot illustrate to this Court that their interests are co-extensive with other parties in that they themselves are not part of the class they seek to represent.

CONCLUSION

It is respectfully submitted that a class action does not lie in the case sub judice.

Respectfully submitted,

STUART SIMON  
Dade County Attorney  
1626 Dade County Courthouse  
Miami, Florida 33130  
(377-5351)

By   
Stanley B. Price  
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendants' Memorandum of Law was served by mail upon Ellis S. Rubin, Esquire, 407 Lincoln Road - Suite 11-A, Miami Beach, Florida 33139 this 18<sup>th</sup> day of September, 1973.

  
Assistant County Attorney

FILED FOR RECORD

MB

4 JUN 28 PM 4:52

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT OF FLORIDA IN AND  
FOR DADE COUNTY

CIRCUIT COURT  
DADE CO. FLA.

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490  
(Judge Irwin G. Christie)

MANUEL ARTIME, CLARA BARKER, JANET  
STURGIS, CELIA GONZALEZ, and THANIA  
(SYLVIA) AMENGUAL,

Plaintiffs,

-vs-

RICHARD E. GERSTEIN, as State Attorney  
for the 11th Judicial Circuit of  
Florida, and Martin Dardis, an  
Investigator for the State Attorney  
of the 11th Judicial Circuit of  
Florida,

Defendants.

ORDER

THIS CAUSE came on to be heard on the Defendants' Motion to Dismiss the Plaintiffs' Complaint for Declaratory Judgment and Damages and Other Relief and one of the grounds for the Motion to Dismiss is that the Complaint is not properly one of a class action and the Court being fully advised in the premises and having thoroughly reviewed the Court file, the pleadings and the extensive memorandums of law submitted, it is therefore,

The findings of this Court that a class action must fail in that the named Plaintiffs are not members of a class of individuals they seek to represent.

The Complaint is deficient in that a mere recital that the class "is so numerous that joinder of all members is impracticable" is insufficient to establish a class action. The Court is further compelled to add that it cannot take judicial notice of the number of individuals in a class. See Port Royal Inc. vs Conney, 154 So.2d 734; Winn-Dixie Stores, Inc. vs Sams, 281 So.2d 47. Merely "touching all the bases" so to speak, with general allegations is an insufficient foundation for a true class action. See Hendler vs Rogers House Condominium Inc., 234 So.2d 128.

It is therefore, ORDERED and ADJUDGED that the Motion to Dismiss is treated by the Court as a Motion to Strike that part of the Complaint that deals with a class action. The Court reserves ruling on the Motion to Dismiss filed by the Defendants on the other grounds alleged.

DONE and ORDERED in Chambers at Miami, Dade County, Florida, on this 11 day of October, 1973.

\_\_\_\_\_  
JUDGE, CIRCUIT COURT

COMING OF ... DE *hand delivered*  
BY

FILED FOR RECORD

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4 JUN 28 PM 4 '73

CLERK CIRCUIT COURT  
DADE CO. FLA.

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490

MANUEL ARTIME, CLARA BARKER, :  
JANET STURGIS, CELIA :  
GONZALEX, and THANIA (SYLVIA) :  
AMENGUAL, :

Plaintiffs, :

O R D E R

-vs-

RICHARD E. GERSTEIN, as State :  
Attorney for the Eleventh :  
Judicial Circuit, et al. :

Defendants. :

UPON PETITION of the parties, it is

ORDERED AND ADJUDGED that all Subpoenas and  
Subpoenas Duces Tecum previously issued and served in this  
cause be, and they are hereby continued in full force and effect  
and should be obeyed at the next scheduled hearing in this  
cause set for 2:30 p.m. in these Chambers on Friday, October  
12, 1973.

DONE AND ORDERED at Miami, Dade County, Florida this  
4th day of October, 1973.

  
CIRCUIT JUDGE

Copy furnished counsel.

FILED FOR RECORD

73 SEP 4 24 4 38 IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY

RICHARD P. DRINKER  
CLERK CIRCUIT COURT GENERAL JURISDICTION DIVISION  
DADE CO. FLA.

CASE NO. 73-19490

MANUEL ARTIME, CLARA BARKER, :  
JANET STURGIS, CELIA :  
GONZALEZ, and THANIA (SYLVIA) :  
AMENGUAL, :

Plaintiffs, :

vs. :

DEFENDANTS'  
MOTION TO DISMISS

RICHARD E. GERSTEIN, as State :  
Attorney for the Eleventh :  
Judicial Circuit of Florida, :  
and MARTIN DARDIS, an :  
Investigator for the State :  
Attorney for the Eleventh :  
Judicial Circuit of Florida, :

Defendants. :

COMES NOW, RICHARD E. GERSTEIN, State Attorney for the Eleventh Judicial Circuit of Florida, and MARTIN DARDIS, an Investigator for the State Attorney for the Eleventh Judicial Circuit of Florida, the Defendants herein by and through their undersigned attorney and hereby move to dismiss the Complaint for Declaratory Judgment and Damages and state as follows:

- (1) The above styled action is not properly one of a class action;
- (2) The Plaintiffs have failed to allege how the class they seek to represent is so large that it will be impractical to bring them all before this Honorable Court. Mere recital of the language "is so numerous that joinder of all members is impracticable" is insufficient to create a class action;

(3) The questions of law raised by the Plaintiffs herein are not common to any class of individuals in that the facts, as alleged, are unique;

(4) The Plaintiffs herein have intentionally misled this Honorable Court in that paragraph 4 of Count I, paragraph 4 of Count II, paragraph 4 of Count III, paragraph 2 of Count IV, and paragraph 2 of Count V purport to hold a Final Judgment dated June 21, 1973, in Dade County Circuit Court, Case No. 73-14213 (Judge Falk) as dispositive of the case sub judice. The Final Judgment dated June 21, 1973 was limited solely to the facts of that particular matter and the holding was limited solely to one specific party, the plaintiff therein;

(5) The Complaint should be dismissed for failure to state a cause of action for declaratory decree in that it does not allege sufficient facts to evidence a judicially cognizable bona fide and direct interest inuring to the Plaintiffs;

(6) The named Plaintiffs are not presently under subpoena by the State Attorney's Office and have no particular nor direct interests over and above that of any other resident of Dade County;

(7) The Complaint fails to state a cause of action for declaratory decree in that it merely seeks an advisory opinion of this Court in regard to a possible future cause of action for the State Attorney's Office.

(8) The Complaint fails to state a cause of action for injunctive relief in that it fails to allege sufficient facts which would evidence irreparable injury to the Plaintiffs if the Defendants were not enjoined;



(9) The Complaint seeks a preventive injunction to enjoin a threatened injury already completed.

(10) A duly elected State Attorney and an investigator assigned to said State Attorney enjoy official immunity from damage claims arising out of acts within the scope of their jurisdiction. Madison v. Gerstein, 440 F. 2d 338 (5th Civ. 1971), McNamara v. Hawks, 354 F. Supp. 492 (S.D. Fla. 1973).

STUART SIMON  
Dade County Attorney  
1626 Dade County Courthouse  
Miami, Florida 33130  
377-5351

By Stanley B. Price  
Stanley B. Price  
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendants' Motion to Dismiss was served by mail upon Ellis S. Rubin, Esquire, 407 Lincoln Road-Suite 11-A, Miami Beach, Florida 33139 this 4<sup>th</sup> day of September, 1973.

Stanley B. Price  
Assistant County Attorney

FILED FOR RECORD

'73 SEP 7 PM 4:33

WARD P. DRINKER  
CLERK CIRCUIT COURT  
DADE CO. FLA.

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490

MANUEL ARTIME, CLARA BARKER,  
JANET STURGIS, CELIA  
GONZALEZ, and THANIA (SYLVIA)  
AMENGUAL,

Plaintiffs,

-vs-

RICHARD E. GERSTEIN, As State  
Attorney for the Eleventh  
Judicial Circuit of Florida,  
and MARTIN DARDIS, an Investi-  
gator for the State Attorney  
for the Eleventh Judicial  
Circuit of Florida,

Defendants.

VOLUNTARY AMENDMENT

-----  
The Plaintiff, Janet Sturgis, by and through her undersigned attorney and pursuant to Florida Rule of Civil Procedure 1.190(a) files this Amendment to Count III of the Complaint as follows:

4. (a). Plaintiff alleges that the Defendants, on August 21, 22, 23 and 24, 1973, released to representatives of The Miami Herald and The Miami News, both daily newspapers of statewide circulation, details of information gathered by the Defendants into the private lives of the Plaintiff, Janet Sturgis and her husband, Frank Sturgis. All such publications were contrary to the right of privacy of the Plaintiff; and were in violation of the spirit of the Circuit Court's Final Judgment dated June 21, 1973, in Dade Circuit Court Case No. 73-14213 (Judge Falk).

ELLIS RUBIN LAW OFFICES  
Attorney for Plaintiffs  
407 Lincoln Road-Suite 11-A  
Miami Beach, Florida 33139

BY: Ellis S. Rubin  
ELLIS S. RUBIN

I HEREBY CERTIFY that a true copy of the foregoing Voluntary Amendment was mailed to Stanley B. Price, Esq., Assistant County Attorney, 1626 Dade County Courthouse, Miami, Florida this 6th day of September, 1973.

Ellis S. Rubin  
ELLIS S. RUBIN



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

CASE NO. \_\_\_\_\_

WITNESS SUBPOENA  
"Criminal"

STATE OF FLORIDA, ss.

TO: JANET A. STURGIS

vs.

2515 N. W. 122 Street

INVESTIGATION

Miami, Florida

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\_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Defendants)

(Witnesses)

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA: GREETINGS

We command you to summon the above witnesses to be and appear before the State Attorney, of the Eleventh Judicial Circuit of Florida, on the Sixth Floor, Metropolitan Dade County Justice Building, 1351 N.W. 12th Street, Miami, Florida, on Thursday, July 12, 19 73, at 3:00 P. M., to testify and the truth to speak in behalf of the STATE in a certain matter before said State Attorney pending and undetermined.

And this you shall in no wise omit.

WITNESS, RICHARD P. BRINKER, Clerk of said Court, and the seal of said Court at Miami, Dade County, Florida, this the 12th day of July, 19 73.

(True Copy)  
(Court Seal)

RICHARD P. BRINKER, Clerk  
By Marie Ungaro  
Deputy Clerk

SEE: MR. GERSTEIN

RECEIVED this Subpoena on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, and executed the same on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, by delivering a true copy thereof to the witnesses named above, as follows, to-wit:

SHERIFF, DADE COUNTY, FLORIDA

By \_\_\_\_\_  
Deputy Sheriff

# Sturgis 'con' fund alleged

By RICK ABRAMS  
Miami News Reporter

A "Help the Homeless Fund" operated by Watergate burglar Frank Sturgis was a con operation, but has not been linked with Watergate, the Dade State Attorney's office says.

An investigation is still continuing, however, into two men who allegedly operated a promotional outfit which made illegal telephone charity solicitations for Sturgis' fund.

The two — Paul Diamond and Sam Stier — officers of Phil Shari Enterprises, 1087 NE 79th St., were questioned for several hours yesterday by the state attorney's chief investigator, Martin Dardis.

"We feel it was a boiler-room operation — a group that sets up a charitable operation and absconds with the money," Dardis said.

"We're in the process, however, of investigating further to see what took place, who they solicited, and if any money was collected and where it went. We'd like to talk to anybody who has been approached or telephoned by people asking for money for the fund."

In reporting on the fund's charity status, Sturgis told the secretary of state's office he was setting a goal of \$75,000 for the fund. However, a check of the fund's bank account revealed that its largest sum was \$82.78. It now has a balance of \$7.

"There is no tie with Watergate," Dardis said, "except that Stier met Sturgis through a guy named Gene Kaiser — a soldier of fortune involved in several Cuban underground operations. He brought Sturgis to these guys and that's how they met."

Sturgis is currently serving a 40-year sentence in Danbury, Conn. for his part in the Watergate burglary. In addition, he was indicted Monday in connection with a stolen car ring which transported the cars from South Florida to Mexico, police charge.

In 1970, Sturgis formed a church, the Independent Church of God Inc., and listed the address as 2525 NW 122nd St., which was also his home. He later formed the fund, which, Dardis said, solicited under the promise of "feeding the hungry people."

After receiving complaints in 1971 that members of the fund were making telephone appeals without a permit, the secretary of state's office traced the calls.

Exhibit # 12  
Filed in evidence this  
day of \_\_\_\_\_ 1973  
IRVING O. CHRISTIE  
Circuit Judge

Thursday, August 23, 1973

5A

## 2 quizzed in link to Sturgis

By RICK ABRAMS  
Miami News Reporter

Two men mentioned in connection with Watergate burglar Frank Sturgis' "church" here were being questioned today by the State's attorney's office.

Investigators for Assistant State Attorney Martin Dardis identified the men as Paul Diamond and Sam Stier.

Immediate information on Stier was not released, but Diamond was associated with Sturgis by a telephone number used by the Help the Homeless Fund — a "charity" organization headed by Sturgis as an affiliate of the church he incorporated but which apparently had no congregation.

After receiving complaints in 1971 that members of the fund were making telephone appeals without a permit, the secretary of state's office traced the calls.

Investigators found that calls were being made from Phillip Shari Enterprises Inc., 1087 NE 79th St. Diamond, who says he is a bookkeeper for the firm, was alleged to have placed the calls according to investigators.

But Diamond, a short, husky, modish dresser with thinning black hair, denied making the calls, although he did identify himself as the publicity director for Sturgis' fund.

The fund allegedly was to aid the Independent Church of God Inc., which was at Sturgis' home.

In 1971 Sturgis informed the secretary of state's office that the fund's goal was \$75,000.

Sturgis, who is under a provisional 40-year prison term for his part in the Watergate break-in, apparently did not deposit any large sums in the church's bank account.

Records indicate the most Sturgis had placed in the fund's account was \$82.78. It now has a balance of \$7.

Meanwhile, as the state attorney's investigation continued, Sturgis was indicted here Monday, on unrelated charges, for allegedly transporting stolen cars to Mexico.

12 Exhibit # 14  
Filed in evidence his  
date of 1973  
IRVING CHRISTIE  
Circuit Judge

371-7671

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

CASE NO. \_\_\_\_\_

WITNESS SUBPOENA  
"Criminal"

STATE OF FLORIDA, ss.

TO: CLARA BARKER

vs.

5229 N. W. Fourth Street

INVESTIGATION

Miami, Florida

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Defendants)

(Witnesses)

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA: GREETINGS

We command you to summon the above witnesses to be and appear before the State Attorney, of the Eleventh Judicial Circuit of Florida, on the Sixth Floor, Metropolitan Dade County Justice Building, 1351 N.W. 12th Street, Miami, Florida, on **Thursday, July 12** 19**73**, at **3:00 P.** M., to testify and the truth to speak in behalf of the STATE in a certain matter before said State Attorney pending and undetermined.

And this you shall in no wise omit.

WITNESS, RICHARD P. BRINKER, Clerk of said Court, and the seal of said Court at Miami, Dade County, Florida, this the 12th day of July, 19 73.

(True Copy)  
(Court Seal)

RICHARD P. BRINKER, Clerk

By Marie Ungaro  
Deputy Clerk

SEE: MR. GERSTEIN

RECEIVED this Subpoena on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, and executed the same on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, by delivering a true copy thereof to the witnesses named above, as follows, to-wit:

\_\_\_\_\_

SHERIFF, DADE COUNTY, FLORIDA

By \_\_\_\_\_  
Deputy Sheriff

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

CASE NO. \_\_\_\_\_

WITNESS SUBPOENA  
"Criminal"

STATE OF FLORIDA, ss.

TO: ~~THANIA (SYLVIA) AMENGUAL~~

vs.

~~1821 JEFFERSON AVENUE, APT. #106~~

INVESTIGATION

~~Miami Beach, Florida~~

(Defendants)

(Witnesses)

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA: GREETINGS

We command you to summon the above witnesses to be and appear before the State Attorney, of the Eleventh Judicial Circuit of Florida, on the Sixth Floor, Metropolitan Dade County Justice Building, 1351 N.W. 12th Street, Miami, Florida, on **Thursday, July 12** 19**73**, at **3:00 P.** M., to testify and the truth to speak in behalf of the STATE in a certain matter before said State Attorney pending and undetermined.

And this you shall in no wise omit.

WITNESS, RICHARD P. BRINKER, Clerk of said Court, and the seal of said Court at Miami, Dade County, Florida, this the 12th day of July, 1973.

(True Copy)  
(Court Seal)

RICHARD P. BRINKER, Clerk

By

*Marie Ungaro*

Deputy Clerk

SEE: MR. GERSTEIN

RECEIVED this Subpoena on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and executed the same on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by delivering a true copy thereof to the witnesses named above, as follows, to-wit:

SHERIFF, DADE COUNTY, FLORIDA

By \_\_\_\_\_

Deputy Sheriff



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

CASE NO. \_\_\_\_\_

WITNESS SUBPOENA  
"Criminal"

STATE OF FLORIDA, ss.

TO: CELIA GONZALEZ

vs.

930 N. W. 23 Avenue

INVESTIGATION

Miami, Florida

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Defendants)

(Witnesses)

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA: GREETINGS

We command you to summon the above witnesses to be and appear before the State Attorney, of the Eleventh Judicial Circuit of Florida, on the Sixth Floor, Metropolitan Dade County Justice Building, 1351 N.W. 12th Street, Miami, Florida, on Thursday, July 12 1973, at 3:00 P. M., to testify and the truth to speak in behalf of the STATE in a certain matter before said State Attorney pending and undetermined.

And this you shall in no wise omit.

WITNESS, RICHARD P. BRINKER, Clerk of said Court, and the seal of said Court at Miami, Dade County, Florida, this the 12th day of July, 1973.

(True Copy)  
(Court Seal)

RICHARD P. BRINKER, Clerk  
By Marie Ungaro  
Deputy Clerk

SEE: MR. GERSTEIN

RECEIVED this Subpoena on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and executed the same on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by delivering a true copy thereof to the witnesses named above, as follows, to-wit:

SHERIFF, DADE COUNTY, FLORIDA

By \_\_\_\_\_  
Deputy Sheriff

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

CASE NO. \_\_\_\_\_

WITNESS SUBPOENA  
"Criminal"

STATE OF FLORIDA, ss.

TO: MANUEL ARTIME

vs.

1270 N. E. 85 Street

INVESTIGATION

Miami, Florida

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Defendants)

(Witnesses)

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA: GREETINGS

We command you to summon the above witnesses to be and appear before the State Attorney, of the Eleventh Judicial Circuit of Florida, on the Sixth Floor, Metropolitan Dade County Justice Building, 1351 N.W. 12th Street, Miami, Florida, on Friday, June 15 1973, at 10:30 AM., to testify and the truth to speak in behalf of the STATE in a certain matter before said State Attorney pending and undetermined.

And this you shall in no wise omit.

WITNESS, RICHARD P. BRINKER, Clerk of said Court, and the seal of said Court at Miami, Dade County, Florida, this the 14th day of June, 1973.

(True Copy)  
(Court Seal)

RICHARD P. BRINKER, Clerk

By Joy A. Brown  
Deputy Clerk

SEE: MR. MARTIN DARDIS

RECEIVED this Subpoena on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and executed the same on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by delivering a true copy thereof to the witnesses named above, as follows, to-wit:

SHERIFF, DADE COUNTY, FLORIDA

By \_\_\_\_\_  
Deputy Sheriff

FILED FOR RECORD

JB

74 JUN 28 PM 4:02

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT OF FLORIDA IN AND  
FOR DADE COUNTY

CLERK CIRCUIT COURT  
DADE CO. FLA.

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490 (Judge I. G. Christie)

MANUEL ARTIME, CLARA BARKER, :  
JANET STURGIS, CELIA GONZALEZ, :  
and THANIA (SYLVIA) AMENGUAL, :  
  
Plaintiffs :

vs.

RICHARD E. GERSTEIN, as State : ADDENDUM TO PLAINTIFFS'  
Attorney for the 11th Judicial : MEMORANDA OF LAW  
Circuit of Florida, and Martin :  
Dardis, an Investigator for the :  
State Attorney of the 11th Judicial :  
Circuit of Florida. :  
  
Defendants.

---

Testimony was adduced, and it is uncontradicted, that the State Attorney of Dade County ordered his investigator to telephone the City Desk of The Miami Herald when any Watergate witnesses were called for investigation and that Miami Herald reporters had been in the State Attorney's office on a daily basis writing stories about the Watergate; also, the investigator followed the instructions of the State Attorney to make any comments necessary to the press and television following interrogation of witnesses (pages 13, 14, 24 and 26 of the deposition of MARTIN DARDIS in Case No. 73-14213).

Further, on Page 35 of the same deposition, MR. DARDIS admits that the Chief Assistant State Attorney, JOSEPH DURANT, "may release sworn testimony" of witnesses questioned by that office.

Finally we have the admission of MR. GERSTEIN that he received a telephone inquiry from Miami Herald reporter, ROB ELDER within two or three hours of his interrogation of the Plaintiffs on July 12, 1973, which testimony was procured

by subpoena pursuant to Section 27.04, Florida Statutes. MR. GERSTEIN discussed the testimony of these witnesses with the reporter and admitted to this Court under oath, that he told MR. ELDER some of the things testified to and withheld other items, which, in his judgment, should not be available for publication. It was stated at the Final Hearing in this cause that the testimony of Plaintiff MANUEL ARTIME should be sealed because he is still the subject of a continuing investigation "which may lead to indictment."

As to the Plaintiffs, they all testified that they objected to the release of the testimony to the press; that this invaded their right to privacy; and its release caused them humiliation and embarrassment.

#### THE LAW

Plaintiffs would show that in Circuit Court Case No. 73-14213, Judge Falk enjoined these same defendants from releasing statements procured by subpoena pending information or indictment, unless by Court Order. The factual situation there was identical to this one.

And in DAVIS vs. CLEARWATER 190 So. 2d 789 a State Attorney was enjoined from releasing testimony to the press pending indictment or information proving that it invaded the right of privacy of the witnesses. Neither of these cases have been overruled.

The Defendants rely on GORDON vs. GERSTEIN 189 So. 2d 873 where The Florida Supreme Court observe that sessions by the State Attorney do not have to be in secret. Plaintiffs agree. The GORDON case primarily stands for the proposition that an attorney representing a witness under interrogation by the State Attorney via 27.04 must not interfere with the questioning and must wait outside of the office for possible consultation with his client during the questioning. The GORDON case does not

address itself to the release of testimony to the media before charges are filed.

CONCLUSION

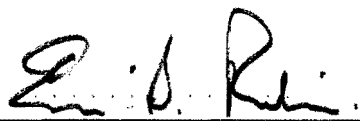
The State Attorney argues that it is within his sole discretion whether or not to invade the privacy of witnesses... by releasing what he wants of the testimony he has procured by subpoena compulsion. In another words, if the State Attorney issued a subpoena to the accountant or secretary of any public official or even a Judge, and thereafter took testimony from that witness and thereafter released parts of the testimony to the press, "because the public has a right to know", that public official or Judge would be publicly charged, tried, convicted and executed before he even had a chance to respond.

If the foregoing example is legally sound and in accord with the Constitution and laws of the United States and Florida, then this Court must rule in favor of MR. GERSTEIN; on the contrary if the ruling of Judge Falk and the District Court of Appeal and common decency and fair play are to be stare decises here, then the Plaintiffs must be granted an injunction prohibiting the State Attorney from publicly executing them again.

Respectfully submitted,

ELLIS RUBIN LAW OFFICES  
407 Lincoln Road -Suite 11A  
Miami Beach, Florida 33139

By

  
ELLIS S. RUBIN

1626 Dade County, Miami  
Stuart Simon, Dade County Attorney  
by delivery on this 2<sup>nd</sup> day  
of November 1973

FILED FOR RECORD

*JB*

74 JUN 28 PM 4:35

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490 (Judge I. G. Christie)

CLERK CIRCUIT COURT  
DADE CO. FLA.

MANUEL ARTIME, CLARA :  
BARKER, JANET STURGIS, :  
CELIA GONZALEZ, and THANIA :  
(SYLVIA) AMENGUAL, :  
Plaintiffs, :

vs. :

RICHARD E. GERSTEIN, as State :  
Attorney for the 11th Judicial :  
Circuit of Florida, and Martin :  
Dardis, an Investigator for :  
the State Attorney of the 11th :  
Judicial Circuit of Florida :  
Defendants. :

ADDENDUM TO PLAINTIFFS'  
MEMORANDUM OF LAW

Plaintiffs allege that a justiciable controversy does exist. Here are five citizens of the State subpoenaed by the State Attorney, "a one man Grand Jury", and compelled to testify, later seeing that testimony on the front pages of newspapers.

The State Attorney contends that since these five are no longer under subpoena then there is no controversy.

Plaintiffs would show that the rights of every citizen of Florida are at stake because all citizens, including these five are subject to such a subpoena at any time, now or in the future. The Declaration sought by the Complaint to this Court is not advisory, as defendants allege. The Declaration sought is to determine the doubts Plaintiffs have as to their rights, immunities, status or privileges and those of the State's Attorney. Those rights, etc., are dependent upon the law applicable to what the State Attorney has done and might do again to the Plaintiffs.

As reflected in Sheldon v. Powell 128 So.258, a Declaratory decree contemplates a judicial determination before a wrong has been committed or damage done. In this regard, a

Declaratory Judgment is not possible when the Plaintiffs are first subpoenaed since there is no release of their testimony to the press as yet. If Plaintiffs were to try obtaining a Declaratory Judgment and Injunction against publication of their testimony prior to the first publication thereof, the defendants would surely argue that the Plaintiffs can not remedy a future injury this way.

No, the threatened injury has not been complete.

The State Attorney can release additional information concerning these Plaintiffs as, in open Court, he has promised to do. To paraphrase, Mr. Gerstein, if it involves Watergate, the public has a right to know. Plaintiffs argue that if it involves their privacy, the public does not have a right to know... unless charges are filed. That is the doubt the Plaintiffs have and that is why Judge Falk in Case No. 73-14212 ruled that the Complaint "states a cause of action for Declaratory relief..." and that the Final Judgment and Injunction were entered as "additional guidelines ... to assist the State Attorney...".

Not one case cited by Defendants have any remote applicability to the facts at Bar. As far as Plaintiffs can determine, there are only two cases where a State Attorney has been enjoined from releasing to the press information concerning the subject of an investigation unless charges are filed. Those cases are Davis vs. Bank of Clearwater 190 So. 2d 789 and Fernandez vs. Gerstein, Dade Circuit Court, Case No. 73-14213 (Judge Falk).

It is not by accidental omission that the defendants have failed to refute or even mention either Davis or Fernandez; neither do they distinguish these decisions from the case at Bar. The two grounds for dismissal raised by the Defendants in this case were raised and argued in Fernandez. Both were denied. And Section 86.011 Florida Statutes, is the reason why. Plaintiffs

are asking this Court to render a Declaratory Judgment on the existence of their right to privacy or the non-existence of the State Attorney's power to publish their testimony now or if the occasion should arise in the future. The Plaintiffs also seek this Court's Writ of Injunction as additional, coercive, and supplemental relief in this action. These are the things Plaintiffs are entitled to according to Section 86.011.

Judge Falk reflected that, " this involves Mr. Fernandez and all citizens, their right not to answer questions, the right to remain silent". These Plaintiffs are citizens who are in doubt as to their rights as opposed to the Power of the State Attorney and they ask this Court to declare those rights and powers. In addition, to secure these rights and to protect them from an abuse of power, they seek an Injunction from this Court compelling the State Attorney to abide by the law now and in the future. If this Complaint should be dismissed, the Plaintiffs would go forth without their day in Court and the State Attorney would go forth to repeat what he was told not to do in Fernandez, but did do less than thirty (30) days later. The need for Injunction is apparent.

Respectfully Submitted,

ELLIS RUBIN LAW OFFICES  
407 Lincoln Road-Suite 11A  
Miami Beach, Florida 33139  
Telephone No. 532-4477


By

  
\_\_\_\_\_  
ELLIS S. RUBIN



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ADDENDUM TO PLAINTIFFS' MEMORANDUM OF LAW was ~~mailed~~ <sup>hand delivered</sup> this 9th day of October, 1973 to STANLEY B. PRICE, Assistant County Attorney, Office of County Attorney, 1626 Dade County Courthouse, Miami, Florida 33130.

  
ELLIS S. RUBIN

FILED FOR RECORD

74 JUN 28 PM 4:32

*Handwritten initials*

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT OF FLORIDA, IN  
AND FOR DADE COUNTY

CLERK CIRCUIT COURT  
DADE CO. FLA.

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490 (I.J. Christie)

MANUEL ARTIME, CLARA BARKER, )  
JANET STURGIS, CELIA GONZALES )  
THANIA (SYLVIA) AMENGUAL, )

Plaintiffs, )

vs. )

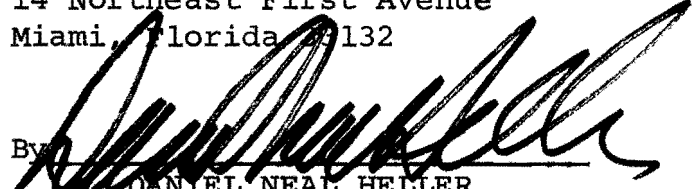
RICHARD E. GERSTEIN, As State )  
Attorney for the 11th Judicial )  
Circuit of Florida, and MARTIN )  
DARDIS, an Investigator for the )  
State Attorney of the 11th )  
Judicial Circuit, )

Defendants. )

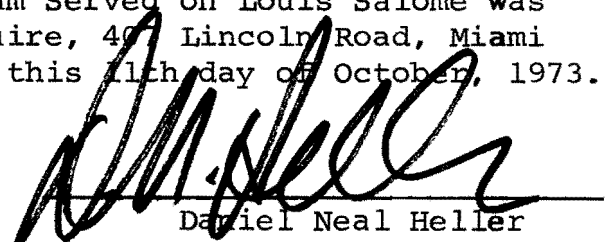
MOTION TO QUASH SUBPOENA  
DUCES TECUM SERVED ON  
LOUIS SALOME

COMES NOW LOUIS SALOME, by and through his undersigned  
counsel and respectfully moves to quash the Subpoena Duces Tecum  
served upon him by the attorney for the plaintiffs herein,  
to-wit: ELLIS RUBIN, Esquire, upon the grounds that the said  
subpoena and its contents violate your movant's First Amendment  
rights to the free and untrammelled reporting of news, guaranteed  
to him under the State and Federal constitutions.

HELLER AND KAPLAN  
Attorneys for LOUIS SALOME  
Suite 1205 Ainsley Building  
14 Northeast First Avenue  
Miami, Florida 33132

By   
DANIEL NEAL HELLER

I HEREBY CERTIFY that a true copy of the above and foregoing  
Motion To Quash Subpoena Duces Tecum Served on Louis Salome was  
hand delivered to ELLIS RUBIN, Esquire, 40 Lincoln Road, Miami  
Beach, Florida, 33139 (Suite 11-A) this 11th day of October, 1973.

  
Daniel Neal Heller

b.w.

FILED FOR RECORD

4 JUN 28 PM 4:32

*MB*

CIRCUIT COURT  
DADE CO. FLA.

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT OF FLORIDA, IN  
AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490 (I.J. Christie)

MANUEL ARTIME, CLARA BARKER, )  
JANET STURGIS, CELIA GONZALES )  
THANIA (SYLVIA) AMENGUAL, )

Plaintiffs, )

vs. )

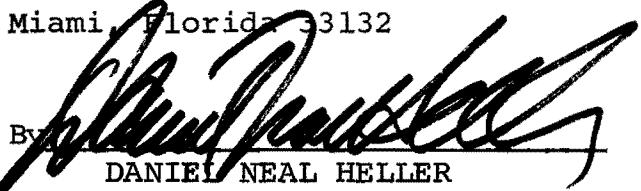
RICHARD E. GERSTEIN, As State )  
Attorney for the 11th Judicial )  
Circuit of Florida, and MARTIN )  
DARDIS, an Investigator for the )  
State Attorney of the 11th )  
Judicial Circuit, )

Defendants. )

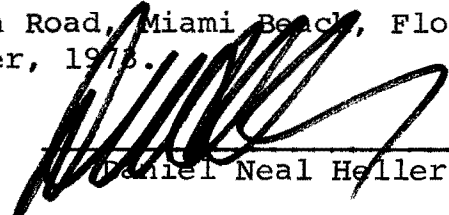
MOTION TO QUASH SUBPOENA  
DUCES TECUM SERVED ON  
RICK ABRAMS

COMES NOW RICK ABRAMS, by and through his undersigned  
counsel and respectfully moves to quash the Subpoena Duces Tecum  
served upon him by the attorney for the plaintiffs herein,  
to-wit: ELLIS RUBIN, Esquire, upon the grounds that the said  
subpoena and its contents violate your movant's First Amendment  
rights to the free and untrammelled reporting of news guaranteed  
to him under the State and Federal constitutions.

HELLER AND KAPLAN  
Attorneys for RICK ABRAMS  
Suite 1205 Ainsley Building  
14 N. E. First Avenue  
Miami, Florida 33132

By   
DANIEL NEAL HELLER

I HEREBY CERTIFY that a true copy of the above and foregoing  
Motion to Quash Subpoena Duces Tecum Served On Rick Abrams was <sup>hand delivered</sup> mailed  
to ELLIS RUBIN, Esquire, 407 Lincoln Road, Miami Beach, Florida, 33139  
(Suite 11-A) this 11th day of October, 1973.

  
Daniel Neal Heller

b.w.

FILED FOR RECORD

*JL* 74 JUN 28 PM 4:08

CLEM. CRIST. COURT  
DADE CO. FLA.

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 73-19490 (Judge I. G. Christie)

MANUEL ARTIME, CLARA  
BARKER, JANET STURGIS,  
CELIA GONZALEZ, and  
THANIA (SYLVIA) AMENGUAL,  
  
Plaintiffs,

vs.

ADDENDUM TO DEFENDANTS'  
MEMORANDUM OF LAW

RICHARD E. GERSTEIN, as State  
Attorney for the 11th Judicial  
Circuit of Florida, and Martin  
Dardis, an Investigator for the  
State Attorney of the 11th Judicial  
Circuit of Florida,  
  
Defendants.

On September 18, 1973, the defendants herein filed a Memorandum of Law solely limited to the question of whether the above styled cause is properly one of a class nature. Pursuant to the request of this Honorable Court, the defendants will now address themselves to the following issues:

- (1) Does a justiciable controversy exist which can enable the plaintiffs to seek declaratory judgment?
- (2) Should an injunction be issued in a cause when a threatened injury has been completed?

I. Does a justiciable controversy exist which can enable the plaintiffs to seek a declaratory judgment?

It is a well accepted principal of law that there must be a justiciable controversy between the parties before declaratory relief may be given.

Brautigam v. Mac Vicar, (Fla. 1954) 73 So.2d 863; Colby v. Colby (Fla. App. 1960) 120 So.2d 797; Miller v. Miller, (Fla. App. 1963) 151 So.2d 869; Hialeah Race Course, Inc. v. Gulfstream Park Racing Association (Fla. App. 1968) 210 So.2d 750; Cowne v. Weber (Fla. App. 1972) 257 So.2d 105. Courts are further precluded from rendering answers to questions which are academic, moot or theoretical, Bryant v. Gray (Fla. 1954) 70 So.2d 581. In the Bryant case, the Supreme Court of Florida was ask to rule on whether the incumbent Governor of the State of Florida was eligible for re-election. The Court noted:

"No present right is involved. His question is hypothetical and is too remote as to time and too uncertain as to contingencies. He does not allege that he will be nominated or elected to either the unexpired term or a full term. There is no certainty that he will be." 70 So.2d 581, 584.

The Court in applying the above stated facts stated:

"In the case of May v. Holley, Fla. 59 So.2d 636, 639, we held that "Before any proceeding for declaratory relief should be entertained it should be clearly made to appear that there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts." We also held that there must be some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter. The relief sought should not merely be legal advice by the courts or to give an answer to satisfy curiosity." 70 So.2d 581, 584.

In the case sub judice the complaint is totally silent as to a justiciable controversy. There exists not a scintilla of evidence as to whether the named plaintiffs are presently under subpoena to the State Attorney's Office. The nature of the controversy, and the relationship of the parties, must be such that a declaratory decree would be conclusive of the respective rights of the parties. Miami Water Works v. Miami (Fla. App. 1946) 157 Fla. 445, 26 So.2d 194. This proviso is absent in this matter.

It is also a well accepted statement of the law that a Court should not render an opinion which would be merely advisory. Ervin v. North Miami Beach (Fla. 1953) 66 So.2d 235; Ervin v. Taylor (Fla. 1953) 66 So.2d 816; North Shore Bank v. Surfside (Fla. 1954) 72 So.2d 659; State v. Lewis (Fla. 1954) 72 So.2d 823; Collins v. Horten (Fla. App. 1959) 111 So.2d 746; Ashe v. Boca Raton (Fla. App 1961) 133 So.2d 122; Benevolent & Protective Order of Elks v. Dade County (Fla. App 1964) 166 So.2d 605; Virginia Gardens v. Miami Springs (Fla. App 1965) 171 So.2d 199; DeLoach v. Three Bays Properties #2, Inc. (Fla. App 1967) 205 So.2d 362.

A declaration construing a statute or ordinance, or determining its validity, will only be made where there is a justiciable controversy between the parties. Retail Liquor Dealers Association v. Dade County (1958, Fla. App) 100 So.2d 76; Ervin v. North Miami Beach (1953, Fla.) 66 So.2d 235; Bryant v. Gray, supra. Once again, in view of the fact that the named plaintiffs are not presently under subpoena, no declaratory relief may be afforded by the Courts.

It should be further noted that the Courts of the State of Florida have traditionally refused to grant declaratory relief against public officials in the absence of any justiciable controversy. State v. Lewis (1954, Fla.) 72 So.2d 823;

Brautigam v. Mac Vicar, (1954, Fla. ) 73 So.2d 863; Reid v. Kirk (1971, Fla. App) 245 So.2d 877; Bryant v. Gray, supra.

In view of the fact that there is no present, cognizable, bona fide and direct interest by the named plaintiffs herein, declaratory relief does not lie.

II. Should an injunction be issued in a cause when a threatened injury has been completed?

Equity will not ordinarily assume jurisdiction to prevent public officials from doing their duty as required by law. The Courts will not inquire into the discretion of a public official which does not involve some illegality or abuse of discretion.

"The wisdom or policy of official action may not be a predicate for an injunction when the action taken does not involve illegality or a palpable abuse of authority amounting to illegality."

Hathaway v. Munroe (1929, Fla.) 119 So. 149,150.

An injunction is defined as "a discretionary equitable remedy, primarily preventive in nature which is designed to protect one from irreparable injury by commanding acts to be done or prohibiting their commission. Its object or purpose is to preserve an existing state or condition, and to afford relief against future acts that are against equity and good conscience." 17 Fla. Jur. Injunctions, Section 2.

The plaintiffs are seeking an injunction against the alleged misuse of the powers of the State Attorney pursuant to F.S. 27.04. The named plaintiffs have been subpoenaed, have testified, are presently not under subpoena to the State Attorney's Office, and all the information obtained has been released to the media:

"We have no hesitation in saying that the temporary injunction ordered in this case was improvidently and erroneously granted. The original bill upon which it was predicated complained chiefly of acts of trespass that had already been accomplished when the bill was filed. It is academic that injunction is a preventive remedy and will never be granted where it appears that the acts complained of have already been committed. It states that, unless the injunction is granted, irreparable injury will result to complainant without stating any facts from which the court can determine the irreparability of the threatened injury. A bill for injunction must state facts clearly and unequivocally and not merely conclusions of law, or the opinions of the pleader in the form of such conclusions of law." (emphasis added)  
Drew Lumber Co. v. Union Inv. Co., 66 Fla. 382, 63 So. 836, 842 (1913);  
in accord:

Lieberman v. Marshall, 236 So.2d 120 (1970); Wilkinson v. Woodward, (1932, Fla.) 141 So. 313. The Federal Courts have adopted the same philosophy as to actions arising out of the Civil Rights Law. Holland v. Purdy, (5th Cir. 1972) 457 F.2d 802; Schack v. Wainwright (5th Cir. 1968), 391 F.2d 608, cert. denied 88 S.Ct. 2078, 392 U.S. 915, 20 L.Ed.2d 1375; Offner v. Shell's City, Inc. (5th Cir. 1967) 376 F.2d 574. An injunctive cannot prevent an alleged wrong completed.

The second major element of injunctive relief is that the parties are returned to the status quo. At the present time, the named plaintiffs are not under subpoena and a return to the status quo is to place the plaintiffs in the exact situation as they are now or in other terms, nothing will change.



"The purpose of an injunction is not to take sides or to preserve a status quo which existed at some time prior to the controversy. Rather, as we stated in Bowling v. National Convoy & Trucking Co., 101 Fla. 634, 135 So. 541 (1931), "[B]y the status quo which will be preserved by preliminary injunction is meant the last, actual, peaceable, noncontested condition which preceded the pending controversy. . . ."


It is respectfully submitted that the named plaintiffs are presently in a state which is the "last, actual, peaceable, noncontested condition" and the issuance of an injunction would be an exercise in which nothing is accomplished.

CONCLUSION

1. There exists no justiciable controversy by which declaratory relief can be granted.
2. The named plaintiffs herein have no cognizable, bona fide and direct interest in this matter and declaratory relief does not lie.
3. An injunction should not be granted where the acts complained of have already been committed.
4. The named plaintiffs status quo is a position they currently occupy and an injunction will serve no useful purpose.

Respectfully Submitted,

STUART SIMON  
County Attorney  
1626 Dade County Courthouse  
Miami, Florida 33130

By   
Stanley B. Price  
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Addendum to Defendants' Memorandum of Law was served by mail this 4<sup>th</sup> day of October, 1973, upon Ellis S. Rubin, 407 Lincoln Road, Suite 11-A, Miami Beach, Florida.

  
Assistant County Attorney

10 AM 3 36

COURT  
DADE CO. FLA.

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

Case No. 73-19490 (I. <sup>G</sup>J. Christie)

MANUEL ARTIME, CLARA BARKER, )  
JANET STURGIS, CELIA GONZALES )  
THANIA (SYLVIA) AMENGUAL, )

Plaintiffs, )

vs. )

O R D E R

RICHARD E. GERSTEIN, as State )  
Attorney for the 11th Judicial )  
Circuit of Florida, and MARTIN )  
DARDIS, an Investigator for the )  
State Attorney of the 11th )  
Judicial Circuit, )

Defendants. )


THIS CAUSE came on to be heard upon the motions to  
quash subpoenas duces tecum filed by witnesses LOUIS SALOME and  
RICK ABRAMS. Upon the entire record before the Court, it is  
thereupon

CONSIDERED, ORDERED AND ADJUDGED that:

1. The motions to quash subpoenas duces tecum be and  
the same are hereby granted.

2. The subpoenas duces tecum be and the same are  
hereby quashed.

DONE AND ORDERED in Chambers at Miami, Dade County,  
Florida, this 17 day of October, A.D., 1973.

  
CIRCUIT JUDGE

Copies furnished:  
Ellis Rubin, Esquire  
Daniel Neal Heller, Esquire  
Richard E. Gerstein, Esq., State Attorney  
Stuart Simon, Esq., County Attorney



FILED FOR RECORD

'74 JUL 1 AM 8:25

EXHIBIT LIST

Manuel Artime et al vs. Richard E. Gerstein, et al  
DADE CO. FLA.

Case No. 73-19690

Circuit Court. Verdict Date

Judge F. H. Christie

Description of Exhibits	Plff's Exhibit M.F.I.	Plff's Exhibit	Deft's Exhibit M.F.I.	Deft's Exhibit
Miami Herald 7/10/73		2		
Miami Herald 7/13/73		3		
Miami Herald 7/19/73		4		
Miami Herald 8/21/73		5		
Miami Herald 8/22/73		6		
Miami Herald 8/23/73		7		
Miami Herald 8/24/73		8		
Miami News 7/19/73, etc		9		
Miami News 7/13/73		10		

REMARKS: Exhibits came down from Judges Chamber 6/28/74  
Plff's Ex: 1 missing at time of Exhibits list being made out  
all Exhibits in Exhibits file

Court Clerk  
*Sol Harris*  
File Clerk

IN THE CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT OF FLORIDA IN AND FOR  
DADE COUNTY GENERAL DIVISION

NO. 73-19490 (Judge I. G. Christie)

MANUEL ARTIME, CLARA BARKER, :  
JANET STRUGIS, CELIA GONZALEZ, :  
and THANIA (SYLVIA) AMENGUAL, :

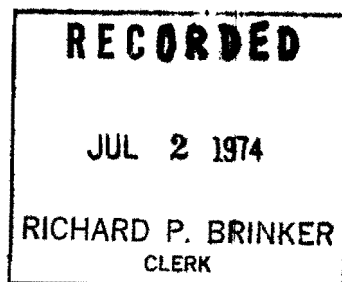
Plaintiffs, :

vs. :

ORDER

RICHARD E. GERSTEIN, as State :  
Attorney for the 11th Judicial :  
Circuit of Florida, and Martin Dardis, :  
an Investigator for the State Attorney :  
of the 11th Judicial Circuit of Florida, :

Defendants. :



THIS CAUSE came on to be heard upon the Defendants' Motion to Dismiss the Plaintiffs' Complaint for Declaratory Judgment and Damages and upon Plaintiffs' Motion for Temporary Injunction. The Complaint, which was framed as a class action (class action was dismissed by Order of this Court on October 11, 1973), seeks to enjoin the State Attorney from allegedly abusing his subpoenae power pursuant to F.S. 27.04. The Plaintiffs further seek a declaratory judgment, pursuant to Chapter 86 of the Florida Statutes, as to their rights under F.S. 27.04. The Court, having thoroughly reviewed the Court file, the pleadings, the extensive memoranda of law submitted and the benefit of testimony offered at a partial hearing for a temporary injunction on September 13, 1973, and being otherwise fully advised in the premises, finds the Complaint and voluntary amendment thereto, when viewed in a light most favorable to the Plaintiffs, fails to state a claim upon which judgment for a declaratory judgment, pursuant to Chapter 86 of the Florida Statutes, can be granted.

The Court further makes the following findings and conclusions:

1. The named Plaintiffs are not presently under subpoenae to the State Attorney's Office pursuant to F.S. 27.04 and as such:

(a) The Court cannot enter a declaratory judgment which would be at this time academic, moot or theoretical as to the issue of this matter; and

(b) The Plaintiffs have no present cognizable, bona fide, and direct interest in the relief sought and as such lack standing in this matter, and therefore, they cannot obtain a declaratory judgment from this Court; and

(c) Lacking a justiciable controversy, the Court is not empowered to issue a declaratory judgment.

2. Injunctive relief cannot lie in that the alleged threatened wrong complained of has been completed.

3. Injunctive relief, which seeks to return an individual to the status quo, would not lie in the case sub judice in that the named Plaintiffs are presently in a position which is the last actual, peaceable, noncontested condition prior to the alleged threatened wrong and an injunction at this time would have no effect.

4. Injunctive relief cannot lie in that the named Plaintiffs have failed to demonstrate irreparable injury in that the alleged threatened wrong complained of has been completed.

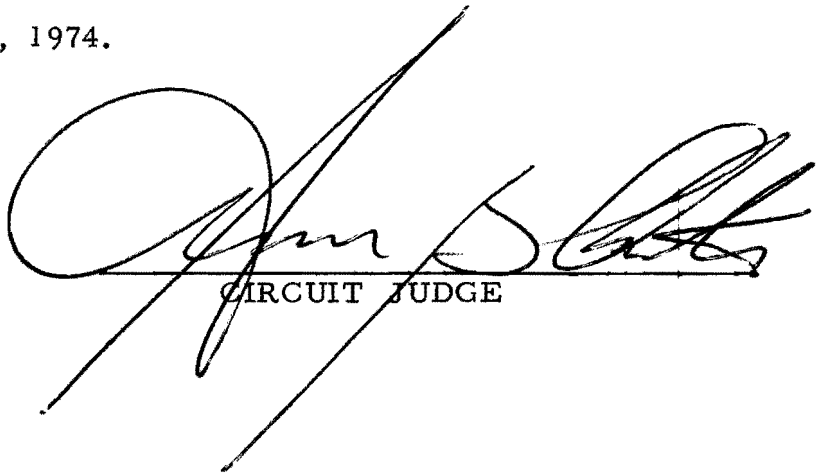
5. This Court, in view of the lack of standing of the named Plaintiffs, need not address itself to the merits of this cause.

It is therefore,

ORDERED and ADJUDGED that:

1. The Defendants' Motion to Dismiss is hereby granted; and
2. The Plaintiffs' Complaint for Declaratory Judgment and Damages stands dismissed with prejudice.

DONE and ORDERED in Chambers at Miami, Dade County, Florida,  
this 28 day of June, 1974.

  
CIRCUIT JUDGE

Copies furnished to:

Ellis S. Rubin, Esquire  
407 Lincoln Road  
Suite 11-A  
Miami Beach, Florida

Stanley B. Price, Esquire  
Assistant County Attorney  
1626 Dade County Courthouse  
Miami, Florida 33130

COUNTY CLERK'S OFFICE  
MAILED 10 30  
ON THE DATE OF ENTRY THEREOF  
BY [Signature]