

144-1-17

December 15, 1943

Arthur D. Shores, Esq.,
Attorney at Law,
1630 Fourth Avenue No.,
Birmingham, Alabama.

Dear Mr. Shores:

Re: Shooting of Alfonso Merritt by
John Patrick, police officer

This will acknowledge receipt of your letter of December 8, 1943, and enclosures concerning the shooting of Mr. Alfonso Merritt by John Patrick, a police officer of Tuscumbia, Alabama. The contents of your letter and the affidavits submitted have been thoroughly studied and considered.

In order for the Government to sustain a successful prosecution under Section 52, Title 18, U. S. Code, it is necessary for it to be shown that the police officer, while acting under color of law, ordinance, regulation and custom, denied the victim his rights guaranteed under the Fourteenth Amendment of the Constitution of the United States. Of course, it would be no trouble to show that Mr. Patrick was an officer, and that he was in the act of performing an official act at the time Mr. Merritt was killed. However, the official act was not being taken against Mr. Merritt, but was being taken against Mrs. Inesta Handy pertaining to a search of her property. Mr. Merritt was, among others, a visitor at Mrs. Handy's home.

In this type case, the defense offered is always the same, namely, that the assault committed by the officer was a personal act on the part of the officer, and not connected with the official act which he was performing. It is always contended that the officer stepped aside from his official duties and committed an act personal, though illegal.

In this case, an effective argument could be made both ways; (1) that the killing of Merritt was done while performing an official act, or (2) was a side issue purely personal, while performing an official act. Because of the very fine line distinguishing the two acts, one legal and one illegal, the Criminal Division does not like to proceed in these cases where there is any

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doubt of the exact violation involved. Where an act is purely personal on the part of the officer, then it is a matter for the State courts to handle, but where it is entirely the result of an official act, and that act depriving one of his constitutional rights, then the Department will proceed if the facts justify it.

For the above reasons, the Department does not feel it should intervene in this case. If the Criminal Division can be of any further help to you, please let me know.

Respectfully,

For the Attorney General,

TOM C. CLARK,
Assistant Attorney General.