WO:HP:mrh

144-40-70

June 4, 1953

Noel H. Malone, Esquire
United States Attorney
Aberdeen, Mississippi

Re: John Thomas;
Claude Otis Johnson - Victim
Civil Rights

Dear Mr. Malone:

This refers to your letter of May 27, 1953, and to the Federal Bureau of Investigation report of Special Agent Joseph A. Canale, dated May 18, 1953, at Memphis.

According to our reading of the Mississippi statutes, a Justice of the Peace does have the power of arrest within his county. It is noted (page 14 of Bureau report) that Deputy Sheriff Caffey stated that it was his understanding that a Justice of the Peace has some type of arrest powers; and it is also noted (page 12 of Bureau report) that subject himself evidently assumed that he had such power.

Section 2467 of the Mississippi Code, 1942, Annotated, states:

> "Arrests for crimes and offenses may be made by the sheriff or his deputy or by any constable or conservator of the peace within his county, or by any marshal or policeman of a city, town, or village within the same. Private persons may also make arrests." (Emphasis inserted.)

Section 2568 states:

> "The judges of the Supreme, circuit, and chancery courts are conservators of the peace throughout the state, and each judge of the county court and every justice of the peace is such within his county. * * *" (Emphasis inserted.)

If we read Section 2568 aright, it would appear that judges of the Supreme, circuit, and chancery courts are conservators of the

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peace throughout the state, while county court judges and Justices of the Peace are conservators of the peace only within their respective counties. Section 1655, cited in your letter, which appears in a chapter of the Code dealing with provisions common to courts (of record?) merely states, as we read it, that certain judges, and chancellors, are State-wide conservators of the peace. (There is an apparent inconsistency--not material here--between Section 1655 and Section 2568 concerning the extent of the county court's functions as conservators of the peace.)

It is also noted that Section 2492, dealing with bail, starts out:

> "All justices of the peace and all other conservators of the peace are authorized," * * *".

If, in the light of the foregoing statutes, a Mississippi Justice of the Peace does have powers of arrest within his county, it seems to us that a thorough and exhaustive investigation of the above case should be conducted forthwith. There must have been eye-witnesses to the killing of the victim by the subject, and every effort should be made to locate such persons and to secure their versions of what occurred. From what appears thus far, subject's conduct appears to have been unconscionable, and it may not be without relevance to note that Johnson was not the first Negro killed by the subject.

It is noted (page 13 of Bureau report) that this case may be presented to the Bolivar County Grand Jury, which is scheduled to convene the third Monday in October, 1953. However, it is our feeling (assuming that a Mississippi Justice of the Peace has powers of arrest in circumstances such as those presented here, and therefore that the subject here was or could have been acting under color of law) that we would be remiss in our responsibilities if we deferred action at this time.

We should appreciate your again reviewing the question of a Justice of the Peace's powers of arrest in his county, and if you conclude that he does have such powers and that subject in this case could therefore have been acting under color of law when he killed the victim, please ask the Bureau immediately to conduct a full investigation. We are asking the Bureau to consult you.

Respectfully,

For the Attorney General

WARREN OLNEY III
Assistant Attorney General