STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. William A. Paisley
Chief, Trial Section

DATE: May 28, 1952

FROM : A. B. Caldwell
Chief, Civil Rights Section

JMM:ABC:bg

SUBJECT: DAVID D. LANCLOS
JOHN LESTER MITCHELL - VICTIM
CIVIL RIGHTS

144-33-81

Reference is made to your memorandum dated May 5, 1952, subject same as above, which transmitted to the Civil Rights Section two copies of memorandums prepared by men in your Section concerning the possibilities of successful prosecution of the above-named case.

I think this is a case where the officer having attempted to make an arrest became infuriated because of the lack of respect shown to him, an officer, by Mitchell, a colored man, in a public restaurant in the South. Further, when Mitchell dared the officer to shoot, the officer considered that his hand was called and having threatened to shoot he could not resist the urge to follow through on his threat, lest he, the officer, lose face under the circumstances. This was an infuriating and intolerable situation under these circumstances to this officer.

To this extent it appears clear, to me at least, that whether the officer used too much force under the circumstances - i.e., whether the killing was necessary, - is a jury question. However, let us assume that a jury did hear the facts and came to the conclusion that the officer did use too much force under the circumstances, that does not necessarily mean that a violation of 242 occurred, for it may very well be that the offense, if any, was a homicide in the nature of manslaughter instead of a violation of Section 242, and hence, the offense, if any, would be a State offense and not a Federal one.

In this connection I feel I should point out what I consider to be an incorrect statement made in Mr. Woerheide's memorandum of May 1, 1952 on the same subject, where he says, paragraph 3, page 6,

> (d) Subject may have used more force than was necessary to defend himself when he shot at victim in such a way as to kill him outright thus violating Section 242, Title 18, U.S.C.

That is not my understanding of the law. Section 242 requires, under Screws v. United States, 325 U.S. 91, a willful intent to deprive a person of his right. Thus, where a jury believes a killing was done in hot temper and as a result of unnecessary force, it still may not be a violation of Section 242 if the required specific intent is lacking.

In any event, it is immaterial that the victim may or may not have been under arrest or in lawful custody of the officer. An official is legally capable of depriving a bystander, not under arrest, of his federal right not to be deprived of life without due process of law.

As is evident from Messrs. Woerheide's and Mattice's memoranda, the basic question in this case is one of fact, and, as stated in our memorandum of March 25, 1952, it is our view that this question should be passed upon by a grand jury. The evidence is not so clear that a body of reasonable men would necessarily agree that the requisite specific intent was totally lacking, and we believe that a finding of a jury that the defendant had such intent would be supported by the evidence and upheld by the courts. We do recognize, however, that it is unlikely, in view of all the known facts and circumstances, that a jury would convict in this case, even if a true bill were returned. In view of this consideration, and this consideration alone, we reluctantly agree with your opinion in the matter. Thus, although we believe that it might be desirable to have an independent body pass on the case, in view of the time and expense that would be involved, and the possible criticism of the Department for furthering hopeless cases, if you adhere to your conclusion that the case should not be presented, we shall close the file. ~~Your further comments will be appreciated.~~

In view of Mr. Whearty's comment's attached - lets close the G— D. Case!

Amen!
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