



NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.  
10 Columbus Circle, New York, N.Y. 10019 • (212) 586-8397

October 31, 1980

Hon. Charles B. Renfrew  
Deputy Assistant Attorney General  
United States Department of Justice  
Washington, D.C. 20530

Re: Investigation into the shooting death of Jose Sinohui, Jr.

Dear Judge Renfrew:

I write in support of the request of the Sinohui family, of Tucson, Arizona, that a new and complete investigation be undertaken in the above noted matter. We would urge you to reconvene a grand jury on an expedited basis and present all the evidence for its consideration.

We are concerned with the continuing problem of police violence against minorities. Experience has shown that federal prosecution under 18 U.S.C. §242 is in most places the only realistic deterrent for this reprehensible conduct. Accordingly, we are disturbed by the delay and lack of aggressiveness that appears to have characterized the Justice Department's investigation into the Sinohui killing. Particularly in light of the findings in the state wrongful death suit, we urge that this case is ripe for prompt, aggressive, and effective Justice Department action.

We are sure that you share our concerns on this matter. Police violence against minorities, particularly in the South and Southwest, has been a persistent problem of significant dimension. We urge that the Department move expeditiously on this matter.

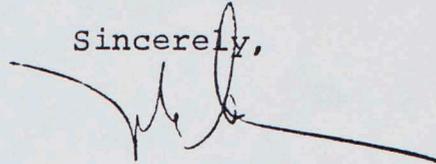
*Contributions are deductible for U.S. income tax purposes*

The NAACP LEGAL DEFENSE & EDUCATIONAL FUND is not part of the National Association for the Advancement of Colored People although it was founded by it and shares its commitment to equal rights. LDF has had for over 20 years a separate Board, program, staff, office and budget.

Judge Charles B. Renfrew  
October 31, 1980  
P.2

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jack Greenberg', with a long horizontal line extending to the right.

Jack Greenberg  
Director-Counsel

JG/rh

cc: Hon. Benjamin R. Civiletti  
Hon. Drew S. Days, III  
Daniel Renzel, Esq.  
Linda Davis, Esq.  
Ambassador Stephen Torrez

bcc: Daniel Haro, Esq.



# Leadership Conference on Civil Rights

2027 Massachusetts Ave., N.W.  
Washington, D.C. 20036  
202/667-1780

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November 7, 1980

Honorable Charles B. Renfrew  
Deputy Attorney General  
Department of Justice  
Room 4111  
10th and Constitution Avenue, N.W.  
Washington, D.C. 20530

Dear Deputy Attorney General Renfrew:

The case of Jose Sinohui is one that demands immediate attention.

I heartily concur with those who are seeking further consideration by the Department of Justice as stated in the letter sent to you on November 6 over the signatures of a number of religious, labor and civil rights leaders.

I strongly urge that a new grand jury be convened with all the evidence this time presented before it. Justice must be done.

Many persons of prominence and stature have questioned the manner in which the Department has handled the Sinohui case thus far. It is imperative that a new look at this pressing issue be carried out in such a manner as to leave no room for anyone to question the Department's fairness and commitment to the enforcement of civil rights. Faith in the legal system must be restored to the poor and disenfranchised of our society.

Thank you for your consideration of this most important civil rights case.

Sincerely,

Clarence Mitchell, Jr.  
Chairman

cc: President Jimmy Carter  
Hon. Benjamin R. Civiletti  
Hon. Drew C. Days, III  
Hon. Daniel Rinzel

"Equality In A Free, Plural, Democratic Society"

November 6, 1980

The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
Washington, D. C.

Dear Judge Renfrew,

We, the leaders of major civil rights organizations, religious denominations and labor unions in this nation, call upon you once again to review the status of the celebrated Jose Sinohui case.

We have recently learned of the grand jury's decision to return a no-bill on the question of Mr. Christopher Dean's indictment for the deprivation of Jose Sinohui's civil rights. After reviewing the incredible series of violation of rights which have transpired involving the Jose Sinohui case, we feel that injustice has once again prevailed over the Hispanic community.

We ask you to consider the following improprieties in this case, as we have, and ask you to join with us in seeking a just resolution of this matter.

First: The fifteen (15) months delay between the presentation of evidence before the grand jury, and a four hour summary prior to a decision being made, is both morally and legally inexcusable. This practice did not allow for an adequate familiarity of witnesses' testimony, and other detailed information vital for establishing the burden of proof-probable cause-necessary for securing an indictment from a grand jury.

The delay can be attributed to the negligence of the Tucson State Court, in their slow response in meeting your request for a copy of all the transcripts. If a simple request for a transcript could only be accomplished as quickly as the taking of an Hispanic's life, there would have been no delay. We feel that the delay was based on administrative negligence in meeting a simple request.

The long delay also allowed members of the grand jury to develop a negative attitude because of events taking place in Tucson, Arizona. At this time, many people in the Tucson area were being influenced by the negative publicity and high emotions being generated by the Hanigan case.

As you can imagine, Judge Renfrew, allowing this criminal investigation to languish so incredibly long with the results ending in only a no-bill by the grand jury, can only add credence to the speculation that the Justice Department does not consider the civil rights of minority people to be of any priority.

The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
November 6, 1980

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Second: The Sinohui case went before the grand jury without considering all of the evidence. Portions of the transcripts from the state civil suit trial for wrongful death, which contained vital testimony that may have helped the grand jury in its' deliberations, were not even evaluated. You had promised members of the Jose Sinohui national support committee that all the evidence which the support committee deemed essential to the case would be considered.

Third: The prosecutor's effort in seeking the indictment against police officer Christopher Dean does not appear to have been pursued vigorously. This brings into question the Justice Department's commitment in this case, and the commitment of the U. S. Attorney's office in Arizona. Given the apparent lack of aggressiveness in the prosecution, it may be necessary to appoint a special prosecutor.

Fourth: The grand jury which heard the case was not sufficiently representative of the racial, ethnic, and social-economic composition of the Tucson community.

The inadequate, still incomplete investigation of the circumstances surrounding the death of Jose Sinohui, has caused the surviving family and members of the community, untold pain and anguish.

It is our recommendation to you now that the Justice Department convene a new grand jury which represents a true cross section of the Tucson community, and that this new grand jury be presented with all of the evidence, including relevant civil suit transcript testimony, without delay.

We appreciate your taking the time to meet with a group of Hispanic leaders in Washington, D. C., on October 21, 1980, to discuss their concern over the Justice Department's handling of the case and to hear their recommendation that another grand jury be convened.

At that meeting, you stated that if for any reason you felt that the formation of a new grand jury was not the appropriate action to take, you would advise the group in advance and meet with them once again allowing them to present their full arguments.

We certainly hope that such a meeting will not be necessary, but are desirous of participating if it is necessary.

The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
November 6, 1980

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The Sinohui case has now been dragged on for three years by the Justice Department. The Department's reluctance to act flies in the face of Attorney General Benjamin Civiletti's promise to make the enforcement of Hispanic American civil rights a high priority during this administration.

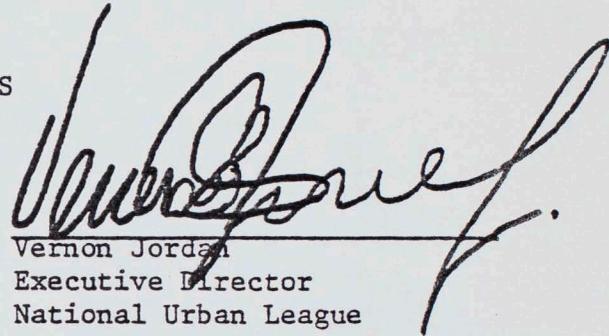
To avoid further suffering on the part of the Sinohui family, to insure justice, and to provide all Hispanic Americans with renewed hope that the federal government is willing to act decisively when the human and civil rights of minorities are denied, we urge strong and aggressive leadership from you regarding this important matter.

Sincerely yours,

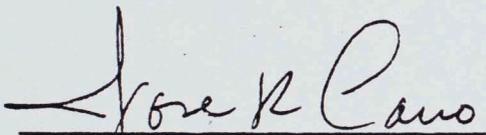
CIVIL RIGHTS ORGANIZATIONS



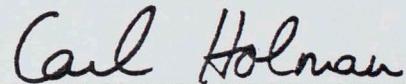
Ruben Bonilla, National President  
League of United Latin  
American Citizens (LULAC)



Vernon Jordan  
Executive Director  
National Urban League



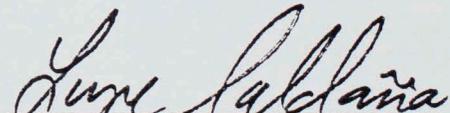
Jose Cano  
Chairman, The American G.I. Forum  
Chairman, SER Jobs for Progress



Carl Holman  
President  
National Urban Coalition



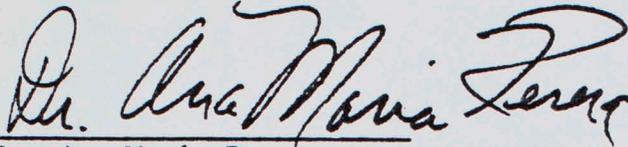
Raul Yzaguirre  
President  
National Council of La Raza



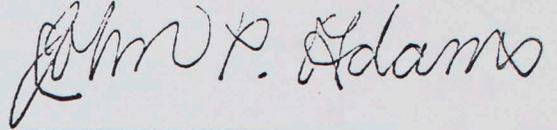
Lupe Saldaña  
Immediate Past President  
The American G.I. Forum

The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
November 6, 1980

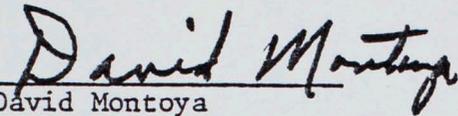
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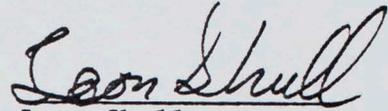
Dr. Ana Maria Perera  
President  
National Association  
of Cuban American Women  
Member Attorney General's Hispanic  
Advisory Committee



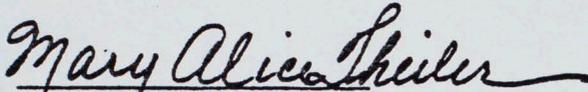
Dr. John P. Adams  
Director  
Department of Law,  
Justice and Community Relations  
The United Methodist Church



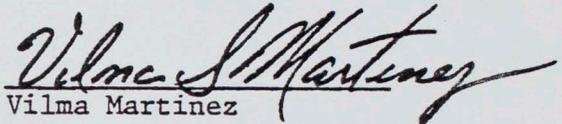
David Montoya  
National President  
National Immage, Inc.



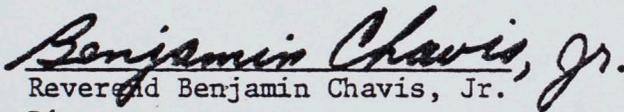
Leon Shull  
National Director  
Americans for Democratic Action



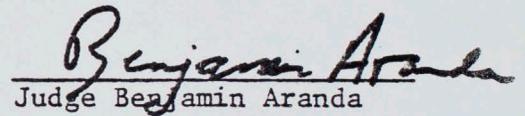
Mary Alice Theiler  
President  
National Lawyers Guild



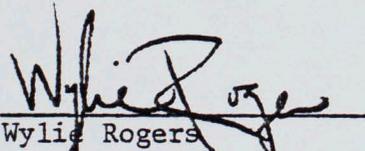
Vilma Martinez  
President, General Counsel  
Mexican American Legal Defense  
and Education Fund (MALDEF)



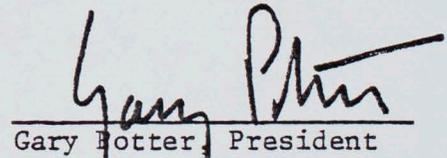
Reverend Benjamin Chavis, Jr.  
Director  
United Church of Christ  
Commission for Racial Justice  
Washington, DC.



Judge Benjamin Aranda  
National President  
La Raza National Bar Association



Wylie Rogers  
Executive Director  
Equal Rights Congress



Gary Potter  
President  
Catholics for Christian  
Political Action (CCPA)

The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
November 6, 1980

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Virgil C. Blum, S.J.

Father Virgil C. Blum, S.J.  
President, Catholic League  
For Religious and Civil Rights

Maria Mercado

Maria Mercado  
National Co-Director  
La Raza Legal Alliance

Wilma Espinosa

Wilma Espinosa  
National President  
Mexican American Women's  
National Association (MANA)

Raymond F. Martinez

Raymond F. Martinez  
Major USAF (Ret.)  
National President  
Retired Hispanic American  
Officers Association

Herman Baca

Herman Baca, Chairman  
Committee for Chicano Rights (CCR)

Ruben Sandoval

Ruben Sandoval  
Director  
Civil Rights Litigation Center  
For the Southwest

Francisco Castellanos

Francisco Castellanos  
Executive Director  
National Association of Farmworkers  
Organizations (NAFO)

Jose Medina

Jose Medina  
Associate Director  
Houston Centro Para Immigrantes

The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
November 6, 1980

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CLERGY LEADERS

+ Robert Sanchez  
Most Rev. Robert Sanchez  
Archbishop of Santa Fe, New Mexico

+ Juan Arzube  
Most Rev. Juan Arzube  
Auxiliary Bishop of Los Angeles, CA

+ P. F. Flores  
Most Rev. Patrick Flores  
Archbishop of San Antonio, Texas  
Chairperson Texas Advisory Committee  
to the U.S. Commission on Civil Rights

+ William Skylstad  
Most Rev. William S. Skylstad  
Bishop of Yakima, Washington

+ Thomas A. Donnellan  
Most Rev. Thomas A. Donnellan  
Archbishop of Atlanta, Georgia

+ Rene A. Valero  
Most Rev. Rene A. Valero  
Auxiliary Bishop of Brooklyn, N.Y.

+ Rembert G. Weakland  
Most Rev. Rembert G. Weakland  
Archbishop of Milwaukee, Wisconsin

+ Joseph J. Madera  
Most Rev. Jose Madera  
Bishop of Fresno, California

+ James Rausch  
Most Rev. James Rausch  
Bishop of Phoenix, Arizona

+ John J. Fitzpatrick  
Most Rev. John J. Fitzpatrick  
Bishop of Brownsville, Texas

+ Gilbert Chavez  
Most Rev. Gilbert Chavez  
Auxiliary Bishop of San Diego, CA.

+ Roger Mahony  
Most Rev. Roger Mahony  
Bishop of Stockton, California

The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
November 6, 1980

Page 7

X Raymond J. Peña

Most Rev. Raymond J. Peña  
Bishop of El Paso, Texas

Rev. Frank Ponce

Rev. Frank Ponce  
Associate Director  
Secretariat for Hispanic Affairs  
NCCB/USCC

Francis J. Green

Most Rev. Francis J. Green  
Bishop of Tucson, Arizona

Dr. Cyprian Lamar Rowe

Dr. Cyprian Lamar Rowe, F.M.S.  
Executive Director  
National Office for Black  
Catholics (N.O.B.C.)

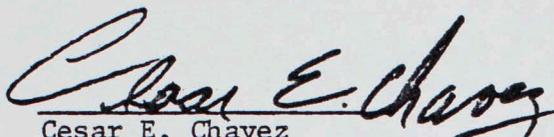
Pablo Sedillo

Pablo Sedillo  
Executive Director  
Secretariat for Hispanic Affairs  
NCCB/USCC

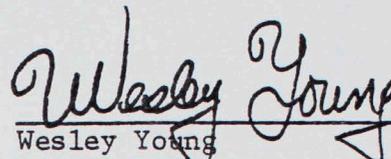
The Honorable Charles B. Renfrew  
Deputy Attorney General  
U. S. Department of Justice  
November 6, 1980

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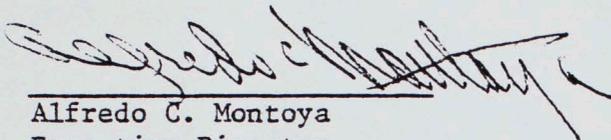
LABOR UNIONS AND ORGANIZATIONS



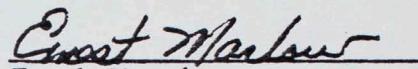
Cesar E. Chavez  
President United Farm Workers  
of America, AFL-CIO



Wesley Young  
Vice President  
The National Alliance of Postal  
and Federal Employees



Alfredo C. Montoya  
Executive Director  
Labor Council for  
Latin American Advancement



Frank Martino  
President  
International Chemical  
Workers Union  
Ernest R. Marlow  
Washington Representative  
for Frank Martino

cc: President James Earl Carter

Ambassador Esteban Torres, Special Assistant to  
the President for Hispanic Affairs

Hon. Edward Kennedy, Chairman - Senate Judiciary Committee

Hon. Dennis DeConcini, U. S. Senator, Arizona

Hon. Benjamin Civiletti, Attorney General

Hon. Drew S. Days III, Chief Civil Rights Division

Hon. Michael Hawkins, U.S. Attorney, Arizona

Bates Butler III, First Assistant U. S. Attorney, Arizona

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IN RE THE MATTER OF  
THE KILLING OF:  
JOSE SINOHUI, JR.

REQUEST FOR NEW GRAND JURY  
SUBMITTED TO

HONORABLE CHARLES B. RENFREW  
DEPUTY ATTORNEY GENERAL  
U.S. DEPARTMENT OF JUSTICE

BY

AMERICANS FOR DEMOCRATIC ACTION  
LA RAZA LEGAL ALLIANCE  
LA RAZA NATIONAL BAR ASSOCIATION  
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND  
NATIONAL BAR ASSOCIATION  
NATIONAL CONFERENCE OF BLACK LAWYERS  
NATIONAL JURY PROJECT  
NATIONAL LAWYERS GUILD  
NATIONAL WOMENS LEGAL DEFENSE FUND  
THE GRAND JURY PROJECT  
THE JOSE SINOHUI NATIONAL SUPPORT COMMITTEE

OCTOBER 31, 1980  
WASHINGTON, D. C.

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The attached is a Memorandum in support of convening a new Grand Jury in the matter of the death of JOSE SINOHUI, JR. on July 2, 1977 at the hands of then South Tucson Police Officer CHRISTOPHER DEAN. This request was discussed at a meeting between Justice Department Officials, including Judge Renfrew and the undersigned Sinohui family attorney and others representing the Justice Department, members of Congress, and groups interested in justice in this case. At that time, it was agreed by Judge Renfrew that he would make the final decision on the question of convening a new Grand Jury, and that that decision would be given top priority within the Justice Department and would be resolved upon an expedited basis.

MEMORANDUM OF POINTS AND AUTHORITIES

HISTORY OF THE CASE

1  
2 Jose Sinohui, Jr. was killed by a shot fired from former  
3 South Tucson Police Officer Christopher Dean's 45 caliber weapon  
4 on July 2, 1977. The deceased was, in accordance with police  
5 orders, proceeding away from the scene of a disturbance in which  
6 he had no involvement when he was shot in the back by Christopher  
7 Dean. Dean fired seven shots in the direction of Sinohui's  
8 vehicle, including the fatal shot, but later testified that he  
9 was merely shooting at the tire of the vehicle. Eyewitness testimony  
10 revealed that there was no justification for Dean's actions in  
11 firing the shots and that, furthermore, the fatal shot was fired  
12 at close range and was carefully aimed at Jose Sinohui's back.

13 Immediately after Dean was cleared by an all white  
14 state court jury on homicide charges in January of 1978, the  
15 Sinohui family requested that the Federal Government intervene  
16 to see that justice was done in this case which had become a  
17 highly visible case of police brutality in the State of Arizona,  
18 the Southwest and the nation.

19 It was not until July of 1979 that the Federal Government  
20 finally announced that a Grand Jury would be convened in the case  
21 to consider whether Civil Rights charges should be filed against  
22 Dean, who had been terminated from the City of South Tucson's  
23 Police Force by that time. Evidence was produced in front of the  
24 Grand Jury in the form of live testimony from eyewitnesses and  
25 experts involved in the investigation of the case. Many documents  
26 were shown to the Grand Jury. At least one expert witness, Mr.  
27 Larmour, was cross-examined by the government prosecutors involved  
28 in the proceeding. It can be assumed that the voluminous eye-  
29 witness testimony concerning the incident was contradictory since  
30 it included, presumably, Dean's testimony and that of his fellow  
31 officer, David Novotny. Since the Justice Department announced  
32

1 that the purpose of the Grand Jury at the time it was convened was  
2 not to render an indictment but merely to investigate the totality  
3 of the circumstances, it is assumed that there was no attempt by  
4 the Justice Department to marshal the evidence in such a way as  
5 to explain the contradictions involved in the testimony of the  
6 numerous eyewitnesses, including Dean and Novotny and those who  
7 had no motive to falsify who had previously gone on record as  
8 indicating there was no justification for Dean's actions. This  
9 gives rise to the question, why after the Justice Department had  
10 the case under consideration for a year and a half did it deem  
11 it appropriate to convene an investigative Grand Jury? It should  
12 be noted that it is the general practice of the United States  
13 Attorney's Office in Arizona to provide grand juries with the  
14 testimony of only one witness, usually a border patrol agent or  
15 F.B.I agent. This fact leads one to the conclusion that the  
16 Justice Department had no intention to obtain an indictment for  
17 civil rights violations in this case when it announced that the  
18 Grand Jury would "investigate" the case. This abundance of  
19 prosecutorial caution has led to a belief that the Justice Depart-  
20 ment is acting as a defense attorney in this matter rather than a  
21 vigorous prosecutor. It is well known that there are plenty of  
22 qualified defense attorneys in the United States who would be  
23 willing to represent police officers charged with Civil Rights  
24 violations. It is submitted that the Justice Department should  
25 have taken a much more vigorous role in the prosecution of this  
26 case from the very early stages.

27           After many months of delay in obtaining an indictment  
28 from the Grand Jury which heard the evidence in August of 1979,  
29 the civil wrongful death action which had been filed by the Sinohui  
30 family resulted in a Judgment in their favor and against Christopher  
31 Dean and the South Tucson Police Department in March of 1979. The  
32 state court judge, Judge Ben Birdsall, who tried the case, found

1 in favor of the Sinohui family in the amount of \$150,000.00  
2 compensatory damages against both Dean and South Tucson, and  
3 further found in favor of the Sinohuis and against Dean in the  
4 amount of \$50,000.00 in punitive damages as a result of his  
5 extreme misconduct. Further, the judge made specific findings  
6 of fact and conclusions of law which made it clear that Dean was  
7 guilty of violating Jose Sinohui's Civil Rights when he unjustifi-  
8 ably shot him in the back. Notwithstanding this clear and  
9 unambiguous finding by a respected member of the Arizona judiciary,  
10 the Justice Department delayed until October 17, 1980, to come back  
11 before the Grand Jury, some fifteen months after the evidence had  
12 been presented, to close out the case. It is our understanding  
13 that witness summaries were presented to the Grand Jury at that  
14 time, and the proceedings lasted a total of four hours, which  
15 represents only a fraction of the time that was taken to present  
16 the voluminous eyewitness testimony fifteen months earlier. The  
17 proceedings which took place on October 17th came days before the  
18 final transcripts of the civil trial were completed by the court  
19 reporters who had worked that case.

20 It was understood by those close to the case, in light of  
21 Judge Renfrew's statements in May of 1980, that the department  
22 would not appear before the Grand Jury to close out the case until  
23 the civil transcripts had been fully considered. Thus, the  
24 appearance before the Grand Jury, only days before important  
25 evidence was readied for consideration, has perplexed the under-  
26 signed as well as others who are knowledgeable of the case. The  
27 appearance made by the Justice Department in turning its back upon  
28 relevant and important evidence, in the form of civil trial  
29 testimony from Dean, Novotny, a respected toxicologist named Ray  
30 Morano, and Sergeant Olsen, chief homicide investigator, has  
31 confirmed that the Justice Department is not interested in Civil  
32 Rights cases concerning minorities.

1           The civil trial testimony of Dean and Novotny revealed  
2 numerous contradictions in their prior testimony and brings out  
3 the important point that Dean and Novotny had spent hours together  
4 immediately after the shooting working on their police reports  
5 back at the South Tucson Police Station. Indeed, Novotny drove  
6 Dean back to the South Tucson Police Station immediately after  
7 the shooting. Mr. Morano has conducted thousands upon thousands  
8 of tests of blood-alcohol readings. He works with the City of  
9 Phoenix Police Department and was independent of both the Tucson  
10 Police Department crime lab and the Tucson coroner, who worked  
11 together in analyzing the ocular fluid taken from the deceased  
12 after his death. Mr. Morano testified that the blood sample  
13 which he obtained from the Coroner's Office indicated that at the  
14 time of Jose Sinohui's death, there was no alcohol in his blood-  
15 stream. This finding contradicted the findings of the Tucson  
16 Police Department, a police department whose conduct had been  
17 called into question by the incident. Mr. Morano was not able  
18 to understand why the Coroner's Office sent the ocular fluid  
19 to the Tucson Police Department without testing it at its own  
20 facility and was further perplexed by the failure of the Tucson  
21 Police Department and the Coroner to test the deceased's blood  
22 for its alcohol content, which is a much more common test than  
23 the ocular fluid test which was administered. Mr. Morano's  
24 testimony was given pursuant to an offer of proof made by the  
25 plaintiffs after the civil judge ruled that the other parties were  
26 not given adequate notice that Mr. Morano would testify. As the  
27 state criminal trial transcripts reveal, Dean's defense includes  
28 a heavy attack on Jose Sinohui personally for being "drunk" at  
29 the time of the shooting, and his attorneys have used the tainted  
30 Tucson Police Department ocular fluid evidence to convince the  
31 triers of fact that Dean's highly improbable story of self-defense  
32 and fleeing felon must be true. This highly prejudicial evidence

1 was not countered in front of the Federal Grand Jury by Mr. Morano's  
2 findings, and it is believed that his findings must be considered  
3 in order for the Federal Grand Jury to render a credible decision.

4 The conclusion that the Federal Grand Jury forgot relevant  
5 evidence by the time it received its briefing by United States  
6 Attorney Michael Hawkins, is inescapable. Mr. Hawkins' attempts  
7 to summarize the testimony of the witnesses clearly prejudiced  
8 the proceedings inasmuch as the Grand Jurors had heard live eye-  
9 witness testimony previously, had been allowed to forget that  
10 testimony in the intervening fifteen month time period, and then  
11 had been confronted with less than verbatim accounts of the  
12 witness testimony.

13 At the time that the Sinohui case was placed before the  
14 Federal Grand Jury, the Hanigan case was set for Grand Jury  
15 consideration. In a very short period of time, in contrast to the  
16 treatment of the Sinohui case, the Justice Department obtained  
17 indictments of the Hanigan brothers. These indictments and the  
18 ensuing trial were accompanied by highly prejudicial publicity  
19 from sources including the local Tucson media, which in large  
20 part attacked hispanics for having sought indictments in the  
21 Hanigan case, and to a fairly substantial extent, the Sinohui  
22 case as well.

23 Further adverse publicity followed the Sinohui civil  
24 Judgment awarded by Judge Birdsall when the punitive damages  
25 portion of the Judgment was paid through Dean's deeding of his  
26 home over to the Sinohuis. The local press treated this collec-  
27 tion process as something that should give rise to great sympathy  
28 in favor of Mr. Dean and made the story front page news. No  
29 mention was made of the fact that Dean's insurer did not cover  
30 the punitive damages by reason of the fact that punitive damages  
31 arise out of the willful, wanton, extreme misconduct of a defendant.  
32 It is our understanding that the Grand Jurors were in no way

1 insulated from this extremely prejudicial publicity, and the entire  
2 process was thereby tainted.

3           The decision to obtain the transcripts of the civil trial  
4 testimony was not made by the Justice Department until July of  
5 1980, nine months after the first portion of the civil trial  
6 transcripts became available, and four months after the final  
7 decision was reached by Judge Birdsall in the case. It is unknown  
8 to the undersigned why the Federal Government, in a case of this  
9 magnitude, was not able to obtain all of the civil trial trans-  
10 cripts during the period of July, 1980, through October 17, 1980.  
11 This inability to accomplish obtainable goals has also led to the  
12 belief that Justice Department has not vigorously sought justice  
13 in this case. Then, after waiting four months for transcripts  
14 which should have been obtained immediately, the Justice Department  
15 decided to go back before the Grand Jury after a fifteen month  
16 lag, only a few days before all of the relevant civil trial  
17 transcripts were completed. Even discounting the four month delay  
18 in obtaining the transcripts, there is no reasonable explanation  
19 for the eleven month delay that preceded the decision to obtain  
20 the transcripts. While it has become a cliché to say that justice  
21 delayed is justice denied, no formulation of words is more descrip-  
22 tive of the history of this case when the role of the Justice  
23 Department is considered.

24  
25                                   BASIS FOR PROSECUTION

26           The elements of the case for prosecution for the depri-  
27 vation of Jose Sinohui's Civil Rights can be made out in a very  
28 substantial way under the facts and law relevant in this case.  
29 Dean's defense that he shot to stop a fleeing felon is not only  
30 totally unsubstantiated by any of the credible witnesses but is  
31 not available to him even under his version of the facts. Dean  
32 testified at the civil trial that he was aware that he could only

1 fire upon a fleeing felon as a last resort if absolutely necessary.  
2 See, transcript of Dean's civil trial testimony at pages 98 and 99.  
3 Accord, former Arizona Revised Statutes Section 13-461 which was  
4 in effect as of the date of the subject killing and which can be  
5 found in the Appendix to former Title XIII, which is located in  
6 Volume 5(a) of the Arizona Revised Statutes, at page 716. A copy  
7 of that section is attached for your easy reference as Exhibit "A".  
8 It is clear that the state law provided that only those homicides  
9 which are "necessarily committed" can be justified under Arizona  
10 law. Dean further testified that the absolutely necessary standard  
11 was a part of his departmental regulations in existence as of the  
12 date of the killing. It seems clear that the words "absolute"  
13 and "last resort" add nothing to the word "necessary" when the  
14 words are used together. However, even if it is assumed for the  
15 sake of argument that there are two different standards which  
16 come into play depending on which word or combination of words  
17 is used, it is clear that under the circumstances of this case,  
18 all of the credible witnesses indicate that Jose Sinohui could  
19 have run former Officer Dean down if he had so desired but  
20 stopped in order to save Dean's life and therefore could not have  
21 been a fleeing felon as Dean alleged, and secondly, that the  
22 police helicopter overhead and the half dozen or more police and  
23 police vehicles were in a better position to apprehend Jose  
24 Sinohui than was Dean. Dean's killing of Jose Sinohui was neither  
25 necessary nor absolutely necessary, and certainly was not a "last  
26 resort".

27 Jorge de la Garza, an Arizona State Corrections Officer  
28 at the Arizona State Prison, who observed the events in question,  
29 leaves no doubt that Dean's story to the effect that he never  
30 shot to kill but always shot at the tire of the vehicle was manu-  
31 factured after the events. De la Garza's testimony at page 9  
32 of the civil trial transcript indicates that Dean fired a "well

1 aimed shot at the back of the cab with his arm held horizontal."  
2 Later on in that transcript, de la Garza testified at page 13  
3 that after the truck had already passed Dean, Dean took a well  
4 aimed shot at the cab and only after that did he lower his arm  
5 to shoot at the tires. This leaves the very distinct impression  
6 that Dean attempted to cover up his well aimed shot with the  
7 shots at the tires. At page 16 of de la Garza's testimony, he  
8 testifies that the truck stopped to avoid hitting Mr. Dean.  
9 At page 17, de la Garza testifies that Dean did not check the  
10 traffic before he entered the streets. At page 19 de la Garza's  
11 testimony conflicts again with Dean's when he points out that the  
12 truck made no sharp turning movements at all, whereas Dean testi-  
13 fied that the truck turned sharply more than once in an attempt  
14 to run Dean down. At page 21, de la Garza testifies that the  
15 distance between Dean and the truck at the time he fired his well  
16 aimed shot at the cab was five to seven feet.

17 It is well settled that 42 U.S.C. §1983 is the civil  
18 counterpart of 18 U.S.C. §242. Greenwood v. Peacock, 484 U.S. 808,  
19 16 Law. Ed. 2d 944, 86 Sup. Ct. 1800 (1966); Robinson v. Bergstrom,  
20 579 F.2d 401 (1978 7th Cir.Ct.App. Ill.); Wegwart v. Eagle Movers,  
21 Inc., 441 F.Supp. 872 (1977 Dist.Ct. Wisc.) Judge Birdsall, in  
22 the civil case against Dean, found expressly, in his findings of  
23 fact and conclusions of law, that Dean had violated Jose Sinohui's  
24 Civil Rights under 42 U.S.C. §1983. This finding, supported by  
25 overwhelming evidence at the civil trial, was on basically the  
26 same issues which must be dealt with under 18 U.S.C. §242. In  
27 the eyes of many, the lack of diligent prosecution by the Federal  
28 Government, even in the face of Judge Birdsall's ruling directly  
29 on point, gives rise to a belief that the Justice Department is  
30 not interested in the Civil Rights of minorities. Certainly, the  
31 standard of probable cause which must be met to justify criminal  
32 prosecution is quite similar to the civil standard of preponderance

1 of the evidence by which Judge Birdsall was bound. His finding  
2 indicates that the evidence showed that it was more probable  
3 than not that Dean violated Jose Sinohui's Civil Rights. In fact,  
4 the punitive damages which were ordered against Dean gives reason  
5 to believe that the judge was satisfied beyond any reasonable doubt  
6 that extreme misconduct had occurred.

7 The important case of Screws v. U.S., 89 Law. Ed. 1495,  
8 65 Sup.Ct. 1031, 325 U.S. 91 (1945), has been used by some in the  
9 Justice Department as authority for the proposition that the burden  
10 of specific intent in a Federal Civil Rights case is nearly  
11 impossible to meet. The assertion is false. At 225 U.S. 105, the  
12 court states in pertinent part:

13 "...When they act willfully in the sense in which  
14 we use the word, they act in open defiance or  
15 in reckless disregard of a constitutional require-  
16 ment which has been made specific and definite.  
17 When they are convicted for so acting, they are  
18 not punished for violating an unknowable something."

19 Even actions taken in reckless disregard of the rights  
20 of the victim are punishable under the Screws' standard. Here,  
21 as in the Screws case, the basic right to trial in a court of law,  
22 not a "trial by ordeal", was terminated by the actions of  
23 Christopher Dean in slaying Jose Sinohui. At page 106 the court  
24 says in pertinent part:

25 "...Those who decide to take the law into their  
26 own hands and act as prosecutor, jury, judge,  
27 and executioner plainly act to deprive a prisoner  
28 of the trial which due process of the law guarantees  
29 him. And such a purpose need not be expressed;  
30 it may at times be reasonably inferred from all  
31 the circumstances attendant on the act. [citation  
32 of authority]

The difficulty is that this question of intent  
was not submitted to the jury with the proper  
instructions. The court charged that petitioners  
acted illegally if they applied more force than  
was necessary to make the arrest effectual or  
to protect themselves from the prisoner's alleged  
assault. But in view of our construction of the  
word "willfully" the jury should have been further  
instructed that it was not sufficient that petitioners  
had a generally bad purpose. To convict it was

1           necessary for them to find the petitioners had  
2           the purpose to deprive the prisoner of a con-  
3           stitutional right, e.g. the right to be tried  
4           by a court rather than by an ordeal. And in  
5           determining whether that requisite bad purpose  
6           was present the jury would be entitled to con-  
7           sider all the attendant circumstances--the  
8           malice of petitioners, the weapons used in the  
9           assault, its character and duration, the provoca-  
10          tion, if any, and the like."

11           Thus it is clear that the Screws' standard requires  
12          that all of the attendant circumstances to the act be taken into  
13          account to determine whether the requisite intent can be found.  
14          Secondly, reckless disregard of the rights of the victim to a  
15          trial in a court of law is sufficient to bring the act within  
16          the constitutionally required level of intent.

17           The "attendant circumstances" revealed by eyewitness  
18          testimony reveal that Officer Ford, of the Department of Public  
19          Safety, was expediting traffic and moving it along at the time  
20          Jose Sinohui's pickup truck proceeded out into the street on  
21          South 6th Avenue. See, the civil trial transcript of Robert Ford  
22          at page 14. Officer Ford testified that there were many cars  
23          proceeding on South 6th Avenue during the times he was directing  
24          traffic on that thoroughfare. This directly contradicts Dean's  
25          testimony that there was no traffic on South 6th Avenue at the  
26          time he entered the Street. As earlier indicated, Corrections  
27          Officer Jorge de la Garza testified that Dean did not even bother  
28          to look for traffic when he entered the street. Officer Ford  
29          was surprised to hear shots being fired even though he was  
30          directly across from Dean and next to the truck when Dean opened  
31          fire. As his testimony indicates at page 18 of the civil trial  
32          transcript, Ford was not in fear for his life by reason of Jose  
33          Sinohui's truck, but was in fear after the shooting started. As  
34          the passenger in the truck Mario Corrales testifies at page 26  
35          of the civil trial transcript, after Dean started firing on the  
36          vehicle, Jose Sinohui then proceeded away from Dean and towards

1 the Veteran's Administration Hospital which was only a few blocks  
2 away from the scene of the shooting. Officer Daykin, in his civil  
3 trial testimony also reveals that he was surprised when Dean opened  
4 fire on the vehicle. Neither Daykin, an officer with the Tucson  
5 Police Department, nor Ford saw any justification for firing upon  
6 the vehicle.

7 Eyewitness Charles Holland, an employee of Tucson  
8 Newspapers, at page 13, confirms de la Garza's testimony to the  
9 effect that Dean did not look for oncoming traffic as he stepped  
10 off the curb and onto the street. Holland also confirms de la  
11 Garza's testimony as to the horizontal level of Dean's arm and  
12 the fact that the deceased did nothing of a provocative nature  
13 at the point it came near, and then proceeded past, defendant  
14 Dean. See, the civil trial transcript of Charles Holland at  
15 pages 22 and 25 respectively. Norma Munoz at page 31 of her civil  
16 trial transcript, also testifies that when Dean was firing at  
17 the vehicle from the back of it, he was firing with his arm and  
18 weapon held straight and steadily held out horizontally with the  
19 street.

20 There was no contention by anyone at any of the proceed-  
21 ings held with respect to this matter to this date that Jose  
22 Sinohui or his passenger Mario Corrales were involved as partici-  
23 pants in any disorderly conduct at the scene of the shooting.  
24 Pursuant to police instructions at the scene, Sinohui and Corrales  
25 decided to move away from the scene and the law enforcement  
26 activities which were taking place there.

27 Robert Ford testified at page 19 of his civil trial  
28 transcript that at the time of the shooting, a police helicopter  
29 was overhead with searchlights focused on the people at the scene  
30 and was an available alternative which could have been used to  
31 pursue the Sinohui vehicle rather than the use of deadly force  
32 which Dean chose to use. As Norma Munoz testified at page 35 of

1 her civil trial transcript, as soon as the shots were fired by  
2 Dean, a number of officers immediately left the area of the  
3 shooting in pursuit of the vehicle using police vehicles which  
4 were readily available for them as a reasonable alternative to  
5 the use of deadly force chosen by Dean.

6           Officer Olsen, the Chief Homicide Detective dispatched  
7 to investigate the slaying of Jose Sinohui, found no evidence  
8 of any marijuana use by either Sinohui or his passenger Corrales,  
9 as his civil trial testimony reflects. However, the fact that a  
10 few marijuana seeds were found under the seat of the pickup truck  
11 has been used by Dean's attorneys to put the victim on trial,  
12 just as the intoxication evidence was used to put the victim on  
13 trial. Neither Olsen's civil trial testimony nor Ray Morano's  
14 civil trial testimony concerning the marijuana and alcohol intoxi-  
15 cation issues had been reviewed by the Justice Department as of  
16 the date this case was closed out on October 17, 1980. These  
17 transcripts and all other available evidence must be reviewed by  
18 the Justice Department and the new Grand Jury at the earliest  
19 practicable date.

20           There can be no lag between the time that the new  
21 Grand Jury reviews the evidence in the case and the time that it  
22 is requested to make a decision on indictment. Vigorous prosecu-  
23 tion must be had on this case in order to restore faith in the  
24 system of justice in this country. The taint brought on by the  
25 fifteen-month lag in the Grand Jury decision and the failure to  
26 consider the civil trial transcripts which were, by all indications,  
27 to be considered by the Department of Justice, must be removed  
28 by the convening of a new Grand Jury and a vigorous prosecution  
29 vindicating the Civil Rights of Jose Sinohui, Jr.

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31 -----  
32 -----

**§ 13-461. Justifiable homicide by officer**

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance either:

1. In obedience to any judgment of a competent court, or
2. Necessarily committed:
  - (a) In overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty.
  - (b) In retaking felons who have been rescued or who have escaped.
  - (c) In arresting persons charged with felony who are fleeing from justice or resisting arrest.