



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.

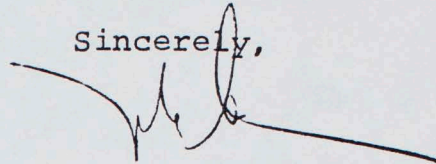
Contributions are deductible for U.S. income tax purposes

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 flourish 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

OFFICERS

HONORARY CHAIRMEN

A. Philip Randolph
Roy Wilkins

CHAIRMAN

Clarence M. Mitchell

SECRETARY

Arnold Aronson

LEGISLATIVE CHAIRPERSON

Jane O'Grady

COUNSEL

Joseph L. Rauh, Jr.

EXECUTIVE COMMITTEE

Bayard Rustin, *Chairman*

A. Philip Randolph Institute

Wiley Branton

NAACP Legal Defense & Education Fund, Inc.

David Brody

Anti-Defamation League of B'nai B'rith

Sen. Edward W. Brooke

National Low Income Housing Coalition

Jacob Clayman

National Council of Senior Citizens, Inc.

Douglas A. Fraser

International Union of

United Automobile Workers

Dorothy Height

National Council of Negro Women

Msgr. George Higgins

U.S. Catholic Conference—

Division of Urban Affairs

Ruth J. Hinerfeld

League of Women Voters of the U.S.

Benjamin L. Hooks

National Association for the

Advancement of Colored People

Ronald Ikejiri

Japanese American Citizens League

Vernon Jordan

National Urban League

Janice Kissner

Zeta Phi Beta Sorority

Iris Mitgang

National Women's Political Caucus

Gilbert Padilla

United Farm Workers of America

Reese Robrahn

American Coalition of Citizens

with Disabilities

John Shattuck

American Civil Liberties Union

Eleanor Smeal

National Organization for Women

Rev. Leon Sullivan

Opportunities Industrialization Centers

J. C. Turner

International Union of Operating Engineers

Kenneth Young

AFL-CIO

COMPLIANCE/ENFORCEMENT

COMMITTEE

William Taylor, *Chairman*

Center for National Policy Review

STAFF

DIRECTOR

Marvin Caplan

EXECUTIVE ASSISTANT

Yvonne Price

SPECIAL CONSULTANT

J. Francis Pohlhaus

PUBLIC AFFAIRS DIRECTOR

Natalie P. Shear

OFFICE MANAGER

Pamela Y. Wheaton

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

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

Page 2

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

Page 3

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.

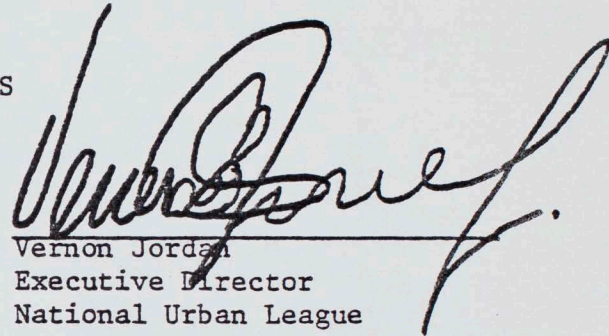
To avoid further suffering on the part of the Sinohui family, to insure justice, and to provide all Hispanic Americans with renewed hope that the federal government is willing to act decisively when the human and civil rights of minorities are denied, we urge strong and aggressive leadership from you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

Sincerely yours,

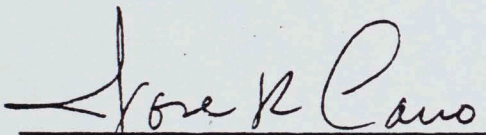
CIVIL RIGHTS ORGANIZATIONS



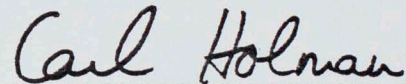
Ruben Bonilla, National President
League of United Latin
American Citizens (LULAC)



Vernon Jordan
Executive Director
National Urban League



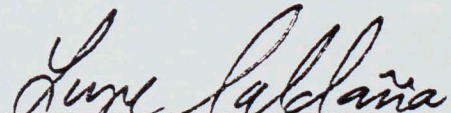
Jose Cano
Chairman, The American G.I. Forum
Chairman, SER Jobs for Progress



Carl Holman
President
National Urban Coalition



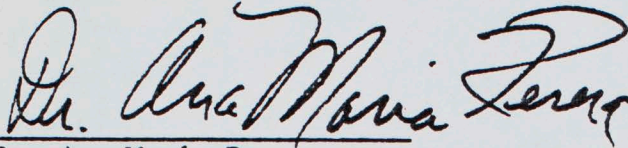
Raul Yzaguirre
President
National Council of La Raza



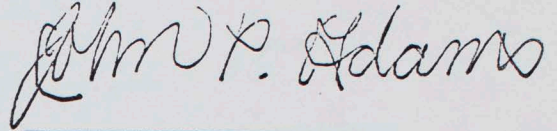
Lupe Saldaña
Immediate Past President
The American G.I. Forum

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

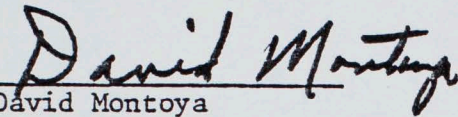
Page 4



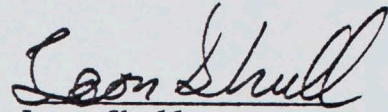
Dr. Ana Maria Perera
President
National Association
of Cuban American Women
Member Attorney General's Hispanic
Advisory Committee



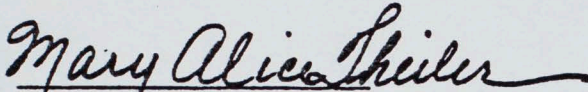
Dr. John P. Adams
Director
Department of Law,
Justice and Community Relations
The United Methodist Church



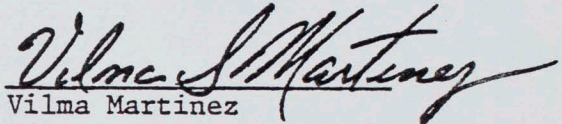
David Montoya
National President
National Immage, Inc.



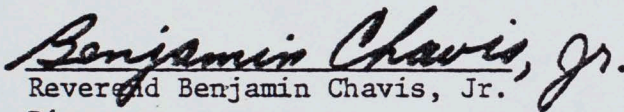
Leon Shull
National Director
Americans for Democratic Action



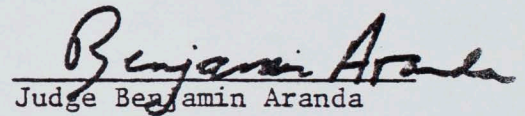
Mary Alice Theiler
President
National Lawyers Guild



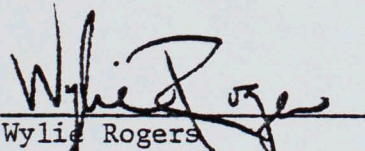
Vilma Martinez
President, General Counsel
Mexican American Legal Defense
and Education Fund (MALDEF)



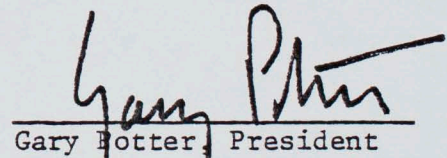
Reverend Benjamin Chavis, Jr.
Director
United Church of Christ
Commission for Racial Justice
Washington, DC.



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

page 5

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

Page 6

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.)

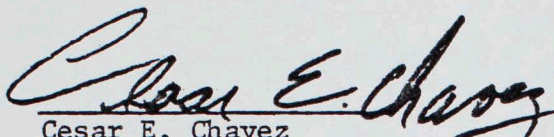
Pablo Sedillo

Pablo Sedillo
Executive Director
Secretariat for Hispanic Affairs
NCCB/USCC

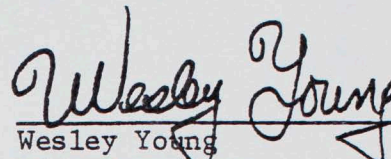
The Honorable Charles B. Renfrew
Deputy Attorney General
U. S. Department of Justice
November 6, 1980

Page 8

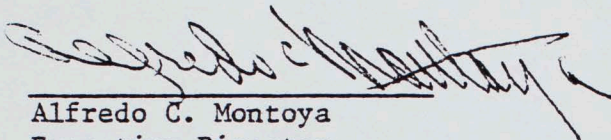
LABOR UNIONS AND ORGANIZATIONS



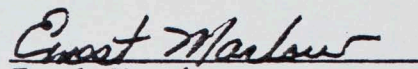
Cesar E. Chavez
President United Farm Workers
of America, AFL-CIO



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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

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.
When they are convicted for so acting, they are
not punished for violating an unknowable something."

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

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

27 The difficulty is that this question of intent
28 was not submitted to the jury with the proper
29 instructions. The court charged that petitioners
30 acted illegally if they applied more force than
31 was necessary to make the arrest effectual or
32 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.

30
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.