

# **The Search for a Just Prosecution:** *The Story of Willie B. Carlisle*



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## I. Introduction

On the surface, it appears as though justice was done for Willie B. Carlisle, an African-American teenager living in small town Alabama. His death at the hands of two police officers received a quick response from local officials, and his murderers were swiftly charged and prosecuted. The officers either left or were removed from their positions. When a county jury failed to bring the suspects to justice, the Federal Bureau of Investigation investigated the incident. Both men were indicted, convicted and sentenced to federal prison.

However, despite the rare success realized in the federal prosecution, a closer look reveals that the outcome in this case that did not accurately reflect the gravity of the officers' crimes, or serve well the goals of the criminal justice system. This essay examines the forces that shaped the prosecutions of Carlisle's murderers and the factors influencing the final results of their cases.

## II. A Small Town

LaFayette is the seat of Chambers County, which is located in east Alabama, right on the Georgia border. The city was named for Marquis de Lafayette, a general in the Continental Army during the American Revolutionary War. LaFayette was also the birthplace of Joe Louis, the famed boxer, who was the World Heavyweight Champion during most of Willie's childhood. It appeared to be a typically gracious southern town, but there were indications that not all of LaFayette's residents were treated respectfully. In a letter to the NAACP written in 1950, a resident of an adjacent county described Chambers as a “rigid misery” for African-Americans. Today, LaFayette is still a small town. According to the 2000 Census, 3,234 people live in LaFayette, the majority of whom are African-American.

### *Willie B. Carlisle*

According to his great-niece, Willie Boxter Carlisle was born on March 15, 1931 in LaFayette, Alabama to Jim “Banjo” Carlisle and Ella Belle Clayborne.<sup>1</sup> As the seventh of nine

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<sup>1</sup> Birthdate from the Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 11.

children, Willie grew up in the tiny rural town of Five Points outside of LaFayette. Tragically, the family was split up in 1937 after Ella Clayborne died from nephritis, which she contracted after giving birth to her youngest child. Young Willie and two of his sisters, Emma Florence and Marion, lived with their father. According to the 1940 Census, Jim Carlisle was working as a tenant farmer at that time.<sup>2</sup> Willie's brother and sister, Mabel and James W., were adopted by Jimmie Dora Smith and moved near Buffalo, Alabama. His other six siblings were all adults – Eva, Ludie Pearl, Sallie, Jim Frank, Eddie and Missie Dell. Of the adult Carlises, Eddie and Jim Frank entered the armed forces.

The family suffered another tragedy in 1941 when their father died. Willie was only 10 years old. It is not clear who cared for Willie after his father died, and his life is largely a mystery, although he did work at Harrell Huguley's service station for a couple of years before his untimely death.<sup>3</sup> Huguley, who was LaFayette's pro tem mayor at the time of Willie's death, said Willie was a good boy who was not known for drinking or getting into trouble.<sup>4</sup>

*James R. Clark and Doyle Mitcham*

James R. Clark and Doyle Mitcham both worked on the night shift in the LaFayette Police Department and reported to Police Chief W.A. Garrett.<sup>5</sup> Clark, age 28, had been sworn in as police officer on Jan. 1, 1950, less than two months before Willie Carlisle's death.<sup>6</sup> James Clark was not new to law enforcement or LaFayette; he had worked as a deputy sheriff in Chambers County for 19 months.<sup>7</sup> Sheriff J.M. Abney said Clark had accepted the job at the city police department because he would earn more money.<sup>8</sup> Clark, whose family lived in LaFayette, lived in the Mill Village section of the city with his wife and three children.<sup>9</sup>

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2 The exact name of the farm is illegible on the Census records.

3 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 11.

4 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 11.

5 "Clark and Mitcham Charged With Murder In Death of Negro," The LaFayette Sun, Feb. 22, 1950.

6 Trial Tr., 99-100, Oct. 31, 1950.

7 Trial Tr., 119, Oct. 31, 1950.

8 Feb. 23, 1950 Teletype of Report by Special Agent Spencer H. Robb made on Feb. 22, 1950 at Mobile, Ala., at 5.

9 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 15.

Doyle Mitcham,<sup>10</sup> age 24, had been a police officer in LaFayette for about ten months prior to Willie Carlisle's death.<sup>11</sup> He was born and raised in Chambers County, where he earned a high school diploma.<sup>12</sup> He lived in Penton with his wife and one child, but most of his family lived near each other in LaFayette.<sup>13</sup>

### **III. The Price of a Deflated Tire**

It was going to be a fun Friday night for the African-American teenagers of LaFayette. C.L. Johnson's Place was hosting a basketball game and a dance on the night of Feb. 17, 1950.<sup>14</sup> Everyone was supposed to leave the building right after the basketball game so that the proprietor could make sure everyone at the dance paid the entrance fee.<sup>15</sup> However, four teenagers tried to stay inside without paying admission – 18-year-old Willie B. Carlisle, 18-year-old Robert Holloway, 18-year-old Joe Junior Silmon<sup>16</sup> and 16-year-old Porter James Spence.<sup>17</sup> The proprietor called the LaFayette police department seeking intervention with the boys. Officer James R. Clark responded and ejected them from the dance after they refused to buy tickets.<sup>18</sup> About five minutes later, Clark and Mitcham discovered that their patrol car had a deflated tire.<sup>19</sup>

The following night, Officer Clark and another officer<sup>20</sup> searched for the four boys who had been kicked out of the dance. Although they did not have a warrant, the officers picked up

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10 There is conflicting information about Mitcham's legal name and its spelling. His defense attorney in the state case argued that his actual name was James Doy Mitcham, not Doyle Mitcham. Mitcham's last name has also been spelled Mitchum and Mitchem in court documents. We have chosen to refer to him as Doyle Mitcham, as this is the name that is most consistently used in official records.

11 "Clark and Mitcham Charged With Murder In Death of Negro," *The LaFayette Sun*, Feb. 22, 1950; "Jury Frees Two White Policemen," *The Ada Evening News*, Mar. 23, 1950, at 3.

12 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 14.

13 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 14.

14 Def.'s Br. 6.

15 Def.'s Br. 6.

16 Silmon's name is spelled inconsistently between federal court records and the FBI report on the case. The federal court records spell his last name as Silman, while FBI records spell it as Silmon. The FBI records indicate that Silmon was the son of the local African-American funeral director, whose name was Roy Silmon. Therefore, we have chosen to refer to him as Joe Junior Silmon.

17 Gov.t's Br. 2; Def.'s Br. 6.

18 Def.'s Br. 7.

19 Gov.t's Br. 2; Def.'s Br. 7.

20 The government's brief (Gov.t's Br. 3) suggests that the second officer was Doyle Mitcham, although Clark's brief did not mention him by name.

Spence, Silmon and Carlisle<sup>21</sup> and took them to the “Calaboose,” the LaFayette city jail.<sup>22</sup>

Testimony during James R. Clark's federal trial explains what happened next.

### *The Teens' Testimony*

During Officer Clark's trial, Porter James Spence testified that he was at the C.L. Cafe when Officers Clark and Mitcham came into the cafe and brought him to their police car.<sup>23</sup> The officers picked up Robert Holloway at his house.<sup>24</sup> Next they caught up with Joe Junior Silmon at Mr. Noble's Grocery Store.<sup>25</sup> Silmon testified that the officers then looked for Willie Carlisle, first at his home and then at Baker's café, but they found him on the road.<sup>26</sup>

Spence and Silmon both testified that they heard Officer Clark ask Carlisle if he had a knife.<sup>27</sup>

Carlisle then pulled a knife out of his right pocket of his overalls and handed it to the officer.<sup>28</sup>

<sup>29</sup>Spence told the jury that even though it was dark outside, he could see the glint of the knife illuminated by a streetlamp.<sup>30</sup>

According to Spence and Silmon's testimony, when the police car arrived at the county jail, Officer Clark exited the driver's seat and went into the jail to get a hose pipe while the teens and Officer Mitcham waited in the car.<sup>31</sup> <sup>32</sup> Silmon said he saw Mitcham open Carlisle's knife while at the “big jail.”<sup>33</sup> Spence testified that when Officer Clark returned, he drove the car to the Calaboose, the city jail.<sup>34</sup> Obeying Clark's instructions, Spence and Silmon exited the car and

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21 Gov.'s Br. 3; Def.'s Br. 7.

22 Gov.'s Br. 3; Def.'s Br. 7.

23 Trial Tr., 17, Oct. 31, 1950.

24 Trial Tr., 27, 63, Oct. 31, 1950.

25 Trial Tr., 46, Oct. 31, 1950.

26 Trial Tr., 47, Oct. 31, 1950.

27 Trial Tr., 19, Oct. 31, 1950.

28 Trial Tr., 29, Oct. 31, 1950.

29 Spence described the knife as “crooked-pointed” (Trial Tr., 29, Oct. 31, 1950), while Silmon said it was “hawk-billed” with a wooden handle (Trial Tr., 56, Oct. 31, 1950).

30 Trial Tr., 28, Oct. 31, 1950.

31 Trial Tr., 19, Oct. 31, 1950.

32 Ashley Eason, the jailor in the county jail, provided contrary testimony. He told the federal jury that Clark did not come to the jail on the night of the beating or the next morning to get a hose pipe. Trial Tr., 98, Oct. 31, 1950.

33 Trial Tr., 56, Oct. 31, 1950.

34 Trial Tr., 19, Oct. 31, 1950.

went into the cell area at the back of the Calaboose.<sup>35</sup> Spence described the cage as a walkway surrounding the cells, all of which were made from metal strips with solid walls near the lobby.<sup>36</sup>

Willie Carlisle remained in the jail lobby with both officers.<sup>37</sup> Spence said he heard one of the officers ask Carlisle if he let the air out of the tire, to which Carlisle responded, “No.”<sup>38</sup> Officer Clark responded that Carlisle was “telling a god damn lie.”<sup>39</sup> Silmon and Spence said he heard the officers tell Carlisle to lie down before they started whipping him.<sup>40</sup> “ ... I heard Willie B. out there hollering and they told him to hush,” Silmon testified.<sup>41</sup> Officer Clark started whipping Carlisle with the hose pipe, delivering hard and fast blows for a beating that went on for more than five minutes.<sup>42</sup> After a while, Clark handed the hose to Officer Mitcham and told him to continue with the beating because he was tired.<sup>43</sup> Spence testified that Officer Mitcham also beat him with a walking stick.<sup>44</sup> According to FBI records, there was a significant size difference between Willie Carlisle, who was 5'9” and weighed 160 pounds, and the two uniformed officers – Clark was 6' tall and weighed 200 pounds; Mitcham was 6'3” tall and weighed 183 pounds.<sup>45</sup>

During the beating, Spence said he heard Willie Carlisle say that he had let the air out of the tires and that Silmon and Holloway were with him when he did it.<sup>46</sup> That confession stopped the beating temporarily, but Officer Mitcham started again after the officers said they would rather whip Carlisle than get a new tire.<sup>47</sup> Eventually, the officers told Carlisle to get up.<sup>48</sup>

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35 Trial Tr., 20, 48 Oct. 31, 1950.

36 Trial Tr., 21, Oct. 31, 1950.

37 Trial Tr., 22, Oct. 31, 1950.

38 Trial Tr., 22, Oct. 31, 1950.

39 Trial Tr., 22, Oct. 31, 1950.

40 Trial Tr., 49-49, Oct. 31, 1950.

41 Trial Tr., 24, 48, Oct. 31, 1950.

42 Testimony of Silmon, Trial Tr., 23, 49, Oct. 31, 1950.

43 Trial Tr., 24, Oct. 31, 1950.

44 Trial Tr., 24, Oct. 31, 1950.

45 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 13-14.

46 Trial Tr., 24, 49 Oct. 31, 1950.

47 Trial Tr., 24, Oct. 31, 1950.

48 Trial Tr., 25, Oct. 31, 1950.

Spence told the jury that Carlisle put his head on the wall.<sup>49</sup> “Mr. [Mitcham] hit him ‘side the head with the walking stick,” Spence testified.<sup>50</sup>

The officer then unlocked a cell door and told Carlisle to go inside.<sup>51</sup> When Carlisle backed up a little bit so that he could open the door to go inside of the cell, Spence said, Officer Mitcham hit him with a walking stick.<sup>52</sup> Spence said he heard Mitcham say, “Don't you back on me you son of a bitch, you just get on in there.”<sup>53</sup> Mitcham then slammed the cell door and told the teenagers, “All you sons of bitches stay in there tonight.”<sup>54</sup> Spence said he could see Willie Carlisle crying in his cell.<sup>55</sup>

Spence told Officer Mitcham that he hadn't done anything, at which point Officer Clark told Mitcham to let Spence out so he could go home.<sup>56</sup> The teenager told the jury what Officer Clark said to him next: “They had let me out and they said I had better go home and I had better not know nothing and I had better not tell nothing. If I does, he was going to put that hose pipe on me.”<sup>57</sup>

The beatings did not stop after Spence left, the teens testified. Robert Holloway testified that the officers asked him if he had anything to do with the air being let out of the tires. Holloway said. “No.”<sup>58</sup> Officer Mitcham told him to lay down on the concrete floor, Holloway said, and the officers whipped him with a rubber hose pipe.<sup>59</sup> Silmon said Holloway's beating lasted three minutes before Holloway told the officers that “Joe [Silmon] told him[Carlisle] he ought not to have done that, and he said he didn't give a G. Damn.”<sup>60</sup>

Silmon and Holloway said the officers turned their attention to Willie Carlisle again and

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49 Trial Tr., 25, Oct. 31, 1950.

50 Trial Tr., 25, Oct. 31, 1950.

51 Trial Tr., 25, Oct. 31, 1950.

52 Trial Tr., 25, Oct. 31, 1950.

53 Trial Tr., 25, Oct. 31, 1950.

54 Trial Tr., 25, Oct. 31, 1950.

55 Trial Tr., 26, Oct. 31, 1950.

56 Trial Tr., 25, Oct. 31, 1950.

57 Trial Tr., 26, Oct. 31, 1950.

58 Trial Tr., 64, Oct. 31, 1950.

59 Trial Tr., 50, 65-66 Oct. 31, 1950.

60 Trial Tr., 50, Oct. 31, 1950.



whipped him for a second time before they called for Silmon.<sup>61</sup> Silmon testified that the officers told him to lay on the ground.<sup>62</sup> Silmon said the officers whipped him for about five minutes with a rubber hose.<sup>63</sup> Holloway testified that when Officers Clark and Mitcham called Carlisle for a third beating, Carlisle was lying down on a box.<sup>64</sup> After the officers whipped him, they returned him to a cell and told the teenagers to go to sleep.<sup>65</sup> Silmon said Willie Carlisle was hollering in the cell.<sup>66</sup> When asked whether Carlisle was crying, Silmon said Carlisle said he was “taking on.”<sup>67</sup>

Silmon said the officers left for 10 or 15 minutes. Although Silmon testified that the officers talked to Frank Lambert during that time, Holloway testified that he didn't hear them talking to anyone.<sup>68</sup> Upon their return, the officers asked Silmon and Holloway to put Willie Carlisle in the police car.<sup>69</sup> Silmon said Carlisle could not walk by himself – “I carried him by one arm ... He was laying up on my shoulder.”<sup>70</sup> Both Silmon and Holloway accompanied Carlisle to the hospital, where they sat him in a chair in the waiting room.<sup>71</sup> Silmon said it seemed like they waited there for an hour.<sup>72</sup> “About two o'clock they called up Roy to come get him and carry him to the other hospital,<sup>73</sup>” Silmon testified. “The colored hospital.”<sup>74</sup> Silmon said he helped transport Carlisle on a stretcher before the officers brought him and Holloway back to the Calaboose.<sup>75</sup> “[T]hey told us if they heard anything out of us they were going to send us to

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61 Trial Tr., 50, 65, Oct. 31, 1950.

62 Trial Tr., 50, Oct. 31, 1950.

63 Trial Tr., 51, Oct. 31, 1950.

64 Trial Tr., 67, Oct. 31, 1950.

65 Trial Tr., 52, Oct. 31, 1950.

66 Trial Tr., 52, Oct. 31, 1950.

67 Trial Tr., 52, Oct. 31, 1950.

68 Trial Tr., 52-53, 67 Oct. 31, 1950.

69 Trial Tr., 52, Oct. 31, 1950.

70 Trial Tr., 53, Oct. 31, 1950.

71 Trial Tr., 53, Oct. 31, 1950.

72 Trial Tr., 53, Oct. 31, 1950.

73 Roy refers to Roy Silmon, the local undertaker who had responsibility for transporting black patients to and from the hospital.

74 Trial Tr., 53, Oct. 31, 1950.

75 Trial Tr., 54, Oct. 31, 1950.

Four Spot, [the reformatory school],” Silmon testified. “Said they ought to do it now. Then they turned us loose and told us to go home.”<sup>76</sup>

*The Stranded Man's Testimony*

J. Frank Lambert, a white man who lived in the area, testified that he went to the jail to get officers Clark and Mitcham to carry him home.<sup>77</sup> Lambert said he was supposed to meet his daughter at 11 p.m. at the picture show, but she had headed home instead.<sup>78</sup> Lambert testified that he had previously lost a foot and needed help getting home because his leg was hurting.<sup>79</sup> When he arrived at the jail, Lambert said, he saw the teenagers through a dusty window and heard snippets of an argument about air being let out of tires.<sup>80</sup>

Lambert testified that he didn't want to be nosy, so he sat in the police car for a while.<sup>81</sup> Lambert said he saw a barlow-style pocket knife in the car's ashtray.<sup>82</sup> He testified that he'd heard “some kind of commotion come up in the jail.”<sup>83</sup> To demonstrate the three loud noises that he heard, Lambert slapped his leg.<sup>84</sup> Lambert walked to the window and saw the officers questioning Silmon.<sup>85</sup> He said he saw the officers bring out Willie Carlisle and have him lay down.<sup>86</sup> The officers asked Carlisle if he knew who let the air out of the tires, Lambert said, and Carlisle responded that he did not.<sup>87</sup> Lambert said he went back to sit in the car, but after hearing a commotion, he went to the Calaboose window and saw the officers beating Carlisle – Clark used a stick and Mitcham used a hose pipe.<sup>88</sup> The commotion had quieted by the time Lambert

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76 Trial Tr., 55, Oct. 31, 1950.

77 Trial Tr., 73, Oct. 31, 1950.

78 Trial Tr., 73, Oct. 31, 1950.

79 Trial Tr., 73, 75, Oct. 31, 1950.

80 Trial Tr., 74, 79 Oct. 31, 1950.

81 Trial Tr., 74, Oct. 31, 1950.

82 Trial Tr., 77, Oct. 31, 1950.

83 Trial Tr., 74, Oct. 31, 1950.

84 Trial Tr., 74, Oct. 31, 1950.

85 Trial Tr., 74, Oct. 31, 1950.

86 Trial Tr., 75, Oct. 31, 1950.

87 Trial Tr., 75, Oct. 31, 1950.

88 Trial Tr., 75, Oct. 31, 1950.

reached the door and knocked on it.<sup>89</sup> Greetings were exchanged and Officer Clark agreed to take Lambert home after they “put up this boy.”<sup>90</sup> Clark tried to help Carlisle up by his arm when the teen did not get up by his own power, but Carlisle stiffened and fell onto the cement floor at Lambert's foot, “like you would turn a log loose,”<sup>91</sup> Lambert testified. Officer Clark asked what was the matter with Carlisle and told him to get into the chair.<sup>92</sup> However, Carlisle did not move until Clark picked him up and pushed him toward the cell door.<sup>93</sup>

At one point, Lambert said that he heard one of the officers speaking to the teenagers – “You know when the man told us to put you out of the gym for not paying out at the colored school, you told somebody that you were going to let the air out of their goddamned tires.”<sup>94</sup>

#### *James R. Clark's Testimony*

James R. Clark testified that he did not have a warrant or writ for the four boys when he took them to the jail.<sup>95</sup> He said that he did not think that letting the air of the car tire was a criminal offense, but he was going to let the Mayor decide.<sup>96</sup> Clark testified that when he asked Willie Carlisle about a knife, Carlisle told him that he did not have one.<sup>97</sup> Clark said after they brought the boys inside of the jail, all three of them said that Spence was not involved.<sup>98</sup> After the officers let Spence go, Clark said they put Silmon and Holloway into a rear cell and kept Willie Carlisle in a front cell.<sup>99</sup> Clark said the officers questioned Carlisle about the tire while he was in the cell.<sup>100</sup> “He just stood there a minute, swelled up, like. We asked him again, and he said, 'Hell, yes, I let the goddamned air out of the tire.' We were asking him why he let the air out of the patrol car tire. He said, 'I don't give a damn about that tire.' We told him first we were

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89 Trial Tr., 75, Oct. 31, 1950.

90 Trial Tr., 75, Oct. 31, 1950.

91 Trial Tr., 75, 80, Oct. 31, 1950.

92 Trial Tr., 75, Oct. 31, 1950.

93 Trial Tr., 75, Oct. 31, 1950.

94 Trial Tr., 77, Oct. 31, 1950.

95 Trial Tr., 109, Oct. 31, 1950.

96 Trial Tr., 111, Oct. 31, 1950.

97 Trial Tr., 101, Oct. 31, 1950.

98 Trial Tr., 102, Oct. 31, 1950.

99 Trial Tr., 102, Oct. 31, 1950.

100 Trial Tr., 102, Oct. 31, 1950.

going to lock him up. He said, “No, you're not going to lock me up.”<sup>101</sup>

Clark testified that he and Mitcham tried to catch Carlisle's arm and push him through the door, but Carlisle grabbed the cage door and kicked his arms and legs to prevent himself from being taken.<sup>102</sup> According to Clark's testimony, Carlisle hit his head on the cage several times in the process.<sup>103</sup> Clark said he hit Carlisle across his leg with a rubber hose that was nearby just before Carlisle pulled a knife out of the old army field jacket that he was wearing.<sup>104</sup> He said that Mitcham hit Carlisle's hand with a walking stick, knocking the knife loose.<sup>105</sup> Clark claimed that Carlisle then lunged directly into the bars of the cell before falling onto floor and hitting his head.<sup>106</sup> Clark testified that Carlisle got up just before someone knocked on the door.<sup>107</sup> Carlisle fell against the bars again and then fell backwards onto the concrete floor.<sup>108</sup> Mitcham put the knife into his own pocket.<sup>109</sup>

Clark testified that they put Carlisle back into a cell before taking Mr. Lambert home.<sup>110</sup> “I told Mr. Mitcham we had better stop by the calaboose and pick that boy up where his head hit the concrete floor and those iron bars and have him checked, let a doctor see it and see if there was anything wrong with him.”<sup>111</sup> Clark said that Carlisle did not need to be carried to the car.<sup>112</sup> The officers took Carlisle and Silmon to the hospital, which was a couple of blocks away.<sup>113</sup>

According to Clark's testimony, when Willie Carlisle arrived, he walked into the hospital on his own power and sat in a chair in the colored waiting room.<sup>114</sup> He waited for at least 15

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101 Trial Tr., 103, Oct. 31, 1950.

102 Trial Tr., 103, Oct. 31, 1950.

103 Trial Tr., 103, Oct. 31, 1950.

104 Trial Tr., 103, Oct. 31, 1950.

105 Trial Tr., 103, Oct. 31, 1950.

106 Trial Tr., 103, Oct. 31, 1950.

107 Trial Tr., 103, Oct. 31, 1950.

108 Trial Tr., 104, Oct. 31, 1950.

109 Trial Tr., 104, Oct. 31, 1950.

110 Trial Tr., 104, Oct. 31, 1950.

111 Trial Tr., 104, Oct. 31, 1950.

112 Trial Tr., 104, Oct. 31, 1950.

113 Trial Tr., 104, Oct. 31, 1950.

114 Trial Tr., 105, Oct. 31, 1950.

minutes to be seen before he was carried into an examination room and laid down on a table.<sup>115</sup>  
Clark denied threatening Silmon before releasing him from custody at the hospital.<sup>116</sup>

### *Medical Testimony*

After 2 a.m. on Feb. 19, 1950, Dr. William G. Wood was called to the hospital by the nurse on duty.<sup>117</sup> Dr. Wood, who was on call, traveled from his home to the treatment room at the hospital.<sup>118</sup> Officers Mitcham and Clark sat in a nearby room while Dr. Wood assessed Willie Carlisle's injuries.<sup>119</sup> Dr. Wood testified that Carlisle was unconscious, had a hematoma on his head and was covered in bruises and scratches.<sup>120</sup> His head, hands, right shoulder, right hip and right thigh were covered in scratches and bruises that the doctor said would have been caused by a blunt object such as a walking cane or a three-foot rubber hose pipe.<sup>121</sup> Dr. Wood said it was possible that Carlisle's injuries could have been caused if he “fell three or four times, knocked over several blunt surfaces and finally fell to the floor.”<sup>122</sup>

Dr. Wood stated that he wasn't able to accurately diagnose Carlisle because he died about three-and-a-half hours after he was admitted to the hospital.<sup>123</sup> The doctor said Carlisle's “desperate condition,” including shock and a concussion, prevented him from obtaining an X-ray.<sup>124</sup> “My impression was at the time [that] he had a fractured skull or cerebral hemorrhage in addition to a severe concussion, brain concussion,” the doctor told the jury.<sup>125</sup>

Two days after Willie Carlisle's death, associate state toxicologist Paul E. Shoffiett arrived in LaFayette to perform Carlisle's autopsy.<sup>126</sup> Carlisle was about 5'9” and 160 pounds at the time

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115 Trial Tr., 105, Oct. 31, 1950.

116 Trial Tr., 105, Oct. 31, 1950.

117 Trial Tr., 39, Oct. 31, 1950.

118 Trial Tr., 39-40, Oct. 31, 1950.

119 Trial Tr., 40, Oct. 31, 1950.

120 Trial Tr., 40-41, Oct. 31, 1950.

121 Trial Tr., 41-42, Oct. 31, 1950.

122 Trial Tr., 42, Oct. 31, 1950.

123 Trial Tr., 41, Oct. 31, 1950.

124 Trial Tr., 43, Oct. 31, 1950.

125 Trial Tr., 41, Oct. 31, 1950.

126 Trial Tr., 83, Oct. 31, 1950.

of his death.<sup>127</sup> Most of the bruises and cuts on Carlisle's body were concentrated between his left ear and his left eye.<sup>128</sup> While Carlisle's skull was not fractured, Shoffiett testified that the teen suffered extensive hemorrhaging in the parietal and temporal regions of his brain.<sup>129</sup> During Shoffiett's testimony, the jury saw pictures of Carlisle's autopsy, including the injuries that he suffered on his head and left thigh and buttock.<sup>130</sup> The image of Carlisle's head with the scalp removed was deemed inadmissible by the judge.<sup>131</sup> Shoffiett testified that he believed Carlisle died of a severe concussion, a medical condition that is generally caused by blunt force trauma.<sup>132</sup>

### *Filling in the Gaps*

The following details were not presented at trial. On the morning of February 18, 1950, Chief Garrett arrived to work to find a note on the police cruiser that mentioned the flat tire.<sup>133</sup> The police chief took the car to Hinkle's Service Station for repair.<sup>134</sup> Silmon, who worked at the station was present and, according to Chief Garret, he “had a guilty look on his face” as he worked on the tire.<sup>135</sup>

Roy Silmon, who was Joe Junior Silmon’s father and owned Silmon Funeral Home,<sup>136</sup> was called to Wheeler Hospital sometime between 1 a.m. to 2 a.m. Feb. 19, 1950. He moved Willie Carlisle, who was then still alive, from the white ward to the colored ward of the hospital.<sup>137</sup> Roy Silmon told the FBI investigator that the left side of Carlisle's head had felt as

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127 Trial Tr., 84, Oct. 31, 1950.

128 Trial Tr., 84, Oct. 31, 1950.

129 Trial Tr., 84, Oct. 31, 1950.

130 Trial Tr., 85, Oct. 31, 1950.

131 Trial Tr., 86, Oct. 31, 1950.

132 Trial Tr., 86, Oct. 31, 1950.

133 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 10.

134 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 10.

135 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 10.

136 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 10.

137 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 10.

“soft as a piece of cotton.”<sup>138</sup> A few hours later, Roy Silmon was called back to the hospital to retrieve Carlisle's body.<sup>139</sup> The death certificate on file at the funeral home incorrectly listed Willie Carlisle's death as Feb. 18, 1950.<sup>140</sup><sup>141</sup>

#### IV. The Investigation and the State Case

Sheriff J.M. Abney testified that he investigated Willie Carlisle's death after the incident was reported to him.<sup>142</sup> Sheriff Abney spoke with both police officers, who told him that they pulled Carlisle out of the dance because he was “too rowdy and boisterous.”<sup>143</sup> They told him that Carlisle tried to attack them with a knife while refusing to enter a cell, so they responded by hitting him.<sup>144</sup> The blow caused Carlisle to fall and hit his head on either the iron bunk or the floor.<sup>145</sup> The officers claimed to have taken Carlisle to the hospital immediately, about 12:30 a.m. Feb. 19, 1950.<sup>146</sup>

Sheriff Abney called Paul E. Shoffiett, who was the associate state toxicologist, on Sunday afternoon, and he came up on Monday morning.<sup>147</sup> Coroner Herbert Milford had called an inquest for Tuesday morning, but it was cancelled after the officers were charged.<sup>148</sup> County Solicitor C.M. Fuller Jr. and Sheriff Abney issued arrest warrants for the officers after Carlisle's

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138 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 10.

139 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 11.

140 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 11.

141 The death certificate for Carlisle was not found despite two searches made by the Alabama Department of Public Health's Office of Vital Records – one made prior to issuing a certificate of failure to find and one made over the phone at the request of the researcher.

142 Trial Tr., 117, Oct. 31, 1950.

143 Feb. 23, 1950 Teletype of Report by Special Agent Spencer H. Robb made on Feb. 22, 1950 at Mobile, Ala., at 4.

144 Feb. 23, 1950 Teletype of Report by Special Agent Spencer H. Robb made on Feb. 22, 1950 at Mobile, Ala., at 5.

145 Feb. 23, 1950 Teletype of Report by Special Agent Spencer H. Robb made on Feb. 22, 1950 at Mobile, Ala., at 5.

146 Feb. 23, 1950 Teletype of Report by Special Agent Spencer H. Robb made on Feb. 22, 1950 at Mobile, Ala., at 5.

147 Trial Tr., 117, Oct. 31, 1950.

148 “Negro, 17, Dies Of Injuries After Arrest,” Associated Press, Feb. 21, 1950; Rex Thomas, “2 Officers Face Murder Count,” Associated Press article run in The Montgomery Advertiser, undated.

death.<sup>149</sup> Abney told reporters that he had to sign the warrants against the officers because Willie Carlisle's relatives declined to do so.<sup>150</sup> “They didn't want to,” he said.<sup>151</sup> After their arrest on murder charges, Officers Clark and Mitcham were represented by defense attorneys Jacob Walker and R.C. Wallace.<sup>152</sup> The officers waived their right to a preliminary hearing and were each placed on \$5,000 bonds, which they were able to meet.<sup>153</sup> On February 20, 1950, the LaFayette City Council suspended both Clark and Mitcham, pending an investigation into Willie Carlisle's death.<sup>154</sup>

The two police officers were indicted by a Chambers County grand jury on March 8, 1950.<sup>155</sup> Both men entered pleas of not guilty to the charge of murder.<sup>156</sup> They were quickly arraigned on March 10, 1950, at which time they entered their pleas and had their trial set for March 22, 1950.<sup>157</sup> Their defense attorneys argued that the joint indictment should be thrown out due to various errors, including improper jury selection jury and the incorrect listing of Mitcham's name.<sup>158</sup> Judge Albert Hooton declined to rule on the motions until the beginning of the trial.<sup>159</sup>

The officers' trial in Chambers County Circuit Court drew one of the largest crowd of spectators in the reported history of the court.<sup>160</sup> Reporters estimated that about 1,000 people

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149 “Clark and Mitcham Charged With Murder In Death of Negro,” The LaFayette Sun, Feb. 22, 1950.

150 Rex Thomas, “2 Officers Face Murder Count,” Associated Press article run in The Montgomery Advertiser, undated.

151 Rex Thomas, “2 Officers Face Murder Count,” Associated Press article run in The Montgomery Advertiser, undated.

152 “Clark and Mitcham Charged With Murder In Death of Negro,” The LaFayette Sun, Feb. 22, 1950.

153 “Clark and Mitcham Charged With Murder In Death of Negro,” The LaFayette Sun, Feb. 22, 1950.

154 “Clark and Mitcham Charged With Murder In Death of Negro,” The LaFayette Sun, Feb. 22, 1950.

155 Memorandum from James M. McInerney to J. Edgar Hoover, March 13, 1950, FBI File 44-3012.

156 LaFayette County Circuit Court minutes, State of Alabama v. No. 1340; “Mitcham and Clark Plead Innocent Of First Degree Murder,” The LaFayette Sun, Mar. 15, 1950.

157 Memorandum from James M. McInerney to J. Edgar Hoover, March 28, 1950, FBI File 44-3012.

158 “Mitcham and Clark Plead Innocent Of First Degree Murder,” The LaFayette Sun, Mar. 15, 1950.

159 “Mitcham and Clark Plead Innocent Of First Degree Murder,” The LaFayette Sun, Mar. 15, 1950.

160 “Mitcham and Clark Are Acquitted of Murder In Carlisle Case,” The LaFayette Sun, Mar. 29, 1950.



who came to watch the one-day trial, spilled out into the aisles of the LaFayette courtroom.<sup>161</sup> About 250 African-American spectators viewed the trial from the balcony.<sup>162</sup> Sheriff Abney's department issued summonses for 100 jurors, which included 39 more jurors than usual.<sup>163</sup>

Newspaper accounts of the state trial reported that Officers Clark and Mitcham testified that they only hit Carlisle so they could get him into a jail cell.<sup>164</sup> Mitcham said he hit Carlisle with a cane when the suspect pulled out a knife.<sup>165</sup> Both officers testified Carlisle fell against the cell block door and probably hit his head a few times in the process.<sup>166</sup>

The case went to the jury at 5 p.m., and the jury chose Raymond Wheeler as its foreman.<sup>167</sup> After a dinner break, the jury resumed its deliberations.<sup>168</sup> It took an hour and 20 minutes for the jury to return not guilty verdicts for both Clark and Mitcham.<sup>169</sup> The verdict was greeted with cheers and applause from the audience.<sup>170</sup>

After the officers' acquittal, the LaFayette City Council held a meeting on March 28, 1950 regarding their suspension from the police department.<sup>171</sup> Mitcham presented his resignation to the council, but Clark was removed by a council vote.<sup>172</sup> Then-mayor Huguley said the council members voted to remove Clark because they “felt that the city would incur much adverse publicity if the subjects were retained in the employ of the city.”<sup>173</sup> The records of the cases against the officers are not easily found – they do not appear on the city's docket during

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161 “Negro Reveals Beating In Jail,” The Anniston Star, Mar. 22, 1950.

162 “Negro Reveals Beating In Jail,” The Anniston Star, Mar. 22, 1950.

163 LaFayette County Circuit Court minutes, State of Alabama v. No. 1340.

164 “Mitcham and Clark Are Acquitted of Murder In Carlisle Case,” The LaFayette Sun, Mar. 29, 1950.

165 “Mitcham and Clark Are Acquitted of Murder In Carlisle Case,” The LaFayette Sun, Mar. 29, 1950.

166 “Mitcham and Clark Are Acquitted of Murder In Carlisle Case,” The LaFayette Sun, Mar. 29, 1950.

167 “Mitcham and Clark Are Acquitted of Murder In Carlisle Case,” The LaFayette Sun, Mar. 29, 1950.

168 “Mitcham and Clark Are Acquitted of Murder In Carlisle Case,” The LaFayette Sun, Mar. 29, 1950.

169 “Jury Frees Two White Policemen,” The Ada Evening News, Mar. 23, 1950, at 3.

170 “Jury Frees Two White Policemen,” The Ada Evening News, Mar. 23, 1950, at 3; “Mitcham and Clark Are Acquitted of Murder In Carlisle Case,” The LaFayette Sun, Mar. 29, 1950.

171 “Mitcham and Clark Are Acquitted of Murder In Carlisle Case,” The LaFayette Sun, Mar. 29, 1950.

172 “Mitcham and Clark Are Acquitted of Murder In Carlisle Case,” The LaFayette Sun, Mar. 29, 1950.

173 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 11.

the time period that they were charged and arraigned.<sup>174</sup>

In a post-trial editorial in the *LaFayette Sun*, its editors called attention to the negative publicity that had been brought to LaFayette as a result of the criminal charges.<sup>175</sup> The editorial said that the officers got a fair trial but that they should not be reinstated to the police department: “The City Council is charged with the responsibility of seeing that our police department is operated in a manner that will reflect credit on our city.”<sup>176</sup> In addition to the lead editorial, the newspaper printed two additional editorials that raised other issues. The editorial staff of the *Birmingham News* questioned why two officers could not handle a young man without resorting to violence: “The South is making progress in control of lynching. But are we equally careful to control officers of the law in their treatment of prisoners, even those who are vicious and dangerous men?”<sup>177</sup>

The *Opelika Daily News*' editorial noted that race relations would not be improved by the trial's result.<sup>178</sup> The newspaper said the state trial had “serious aspects present that would tend to present an example of government by men rather than by law.”<sup>179</sup> The editorial continued, “One man (a negro) is dead, and no one is held accountable for his death. That is not good for law and order. It does not bolster the claim of equal justice for all in our courts.”<sup>180</sup>

After the state case, James R. Clark left Lafayette to seek work in Florida or Texas.<sup>181</sup>

Doyle Mitcham continued to live in his home in Penton, which is in Chambers County.<sup>182</sup>

However, the criminal justice system was not finished with the former LaFayette police officers.

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174 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 11.

175 Editorial, “LaFayette's Unfavorable Publicity,” *The LaFayette Sun*, Mar. 29, 1950.

176 Editorial, “LaFayette's Unfavorable Publicity,” *The LaFayette Sun*, Mar. 29, 1950.

177 Editorial, “Police and their Prisoners,” *The LaFayette Sun*, Mar. 29, 1950.

178 Editorial, “A Regrettable Verdict,” *The LaFayette Sun*, Mar. 29, 1950.

179 Editorial, “A Regrettable Verdict,” *The LaFayette Sun*, Mar. 29, 1950.

180 Editorial, “A Regrettable Verdict,” *The LaFayette Sun*, Mar. 29, 1950.

181 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 12.

182 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 12.

## V. The Federal Case

On Feb. 24, 1950, after bringing up the death at the chapter's February meeting, Dr. J.A. Berry, the President of the Tuskegee Chapter of the NAACP, first wrote the National NAACP, concerning Willie Carlisle's murder.<sup>183</sup> R.L. Matthews, the president of the Montgomery branch of the NAACP, also mailed a letter with newspaper clippings to the NAACP's national office. Jack Greenberg, assistant special counsel at the NAACP Legal Defense Fund, wrote back on March 8, 1950. Attorney Greenberg's letter expressed interest in the Carlisle case: "Would you kindly keep us informed concerning developments in this case, for we are interested in seeing (1) that the guilty parties are given just punishment, and (2) what course the State will take in the matter."<sup>184</sup> Attorney Greenberg's second letter to Dr. Berry, written a day later, further outlined the NAACP's limited options at the time of the state prosecution:

"As I understand it, the state is prosecuting Mr. Carlisle's murderers. The only action which the Association could have taken would have been to press for such a prosecution. I suggest that you can be of aid to us in determining whether or not this prosecution is vigorous and sincere or is merely a sham. If the latter is the case, then we will have a distinct role to play."<sup>185</sup>

The initial correspondence with Attorney Greenburg concerning the state case appears in the official NAACP papers, but no further records exist in that file. Although the extent of any ongoing NAACP involvement in the case is unclear, at the time of Carlisle's death, the organization had a policy of seeking both legislative and legal remedies for violence against African-Americans.<sup>186</sup> Meanwhile, the FBI had been watching the case closely.<sup>187</sup>

In the years prior to Carlisle's murder, the FBI had made various changes in its

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183 Letter from Dr. J.A. Berry to Jack Greenberg, Feb. 24, 1950, Papers of the NAACP Part 8; "Annual Report of the Tuskegee Branch Secretary for 1950," Papers of the NAACP Part 25.

184 Letter from Jack Greenberg to R.L. Matthews, March 8, 1950, Papers of the NAACP Part 8.

185 Letter from Jack Greenberg to Dr. J.A. Berry, Mar. 9, 1950, Papers of the NAACP Part 8.

186 NAACP: 100 Years of History, <http://www.naacp.org/pages/naacp-history>

187 Teletype from J. Edgar Hoover to Special Agent in Charge of the Mobile Office (Spencer A. Robb), Feb. 23, 1950, FBI File 44-3012.

investigative practices in respect to civil rights matters. In the late 1930s, President Franklin D. Roosevelt expanded the jurisdiction of the FBI to include civil rights cases and encouraged the FBI to investigate subversive activities of all citizens, including African-Americans.<sup>188</sup> However, these mandates did not result in prompt investigations under FBI Director J. Edgar Hoover; from the 1930 through the 1960s the Bureau's investigations of civil rights violations against African-Americans were few in comparison to the investigations of African-American activists.<sup>189</sup>

However, Hoover took an interest in Carlisle's murder.<sup>190</sup> Four days after Carlisle's death, Hoover sent a teletype to Spencer H. Robb, the special agent in charge of the Mobile, Ala., FBI office ordering him to follow the state's case and keep the FBI advised about "all pertinent developments."<sup>191</sup> After learning about the extent of Carlisle's injuries from newspaper articles and making a discreet inquiry into the autopsy, Hoover notified Assistant Attorney General James M. McInerney about the state case in a communication titled "Civil Rights and Domestic Violation."<sup>192</sup>

Robb's initial investigation led him to Rex Thomas, the correspondent in charge of the Montgomery Bureau of the Associated Press.<sup>193</sup> During an interview in Montgomery, Thomas told Robb that he had spoken with numerous people about the death, including Chambers County Solicitor C.E. Fuller Jr., Sheriff Abney, Chief Garrett and others.<sup>194</sup> Thomas said that the editor

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188 Kenneth O'Reilly, The FBI and the Civil Rights Movement During the Kennedy Years – From Freedom Rides to Albany, *The Journal of Southern History*, Vol. 54, No 2, 201, 1988.

189 Kenneth O'Reilly, The FBI and the Civil Rights Movement During the Kennedy Years – From Freedom Rides to Albany, *The Journal of Southern History*, Vol. 54, No 2, 202, 1988.

190 Teletype from J. Edgar Hoover to Special Agent in Charge of the Mobile Office (Spencer H. Robb), Feb. 23, 1950, FBI File 44-3012.

191 Teletype from J. Edgar Hoover to Special Agent in Charge of the Mobile Office (Spencer H. Robb), Feb. 23, 1950, FBI File 44-3012.

192 Communication from J. Edgar Hoover to Assistant Attorney General James M. McInerney, Feb. 23, 1950, FBI File 44-3012.

193 Feb. 23, 1950 Teletype of Report by Special Agent Spencer H. Robb made on Feb. 22, 1950 at Mobile, Ala., at 2.

194 Feb. 23, 1950 Teletype of Report by Special Agent Spencer H. Robb made on Feb. 22, 1950 at Mobile, Ala., at 2-3.

of the *Lafayette Sun*, Bonnie Hand, told him that Abney and Garrett would not fully cooperate with the solicitors in the investigation “because of political reasons.”<sup>195</sup> Their inaction was in sharp contrast with the feelings of LaFayette citizens, who were “highly incensed” about how Clark and Mitcham had treated Willie Carlisle.<sup>196</sup> Hand told Thomas that the officers were not suspended from duty until Hand protested to the city council at its Feb. 20, 1950 meeting.<sup>197</sup>

In an April 6, 1950, memorandum to McNerney, J. Edgar Hoover gave some insight into why he was interested in Willie Carlisle's case despite the FBI history of spotty investigation into civil rights violations against African-Americans:

“While the Department does not ordinarily consider prosecution where the subjects have been tried in a state court, the circumstances mentioned above and others in the investigative report would seem to indicate that a grave miscarriage of justice has occurred and that the State prosecuting attorney may not have received the necessary cooperation from the police authorities.”<sup>198</sup>

Three weeks after learning of the outcome of the officers' state case, Hoover sent a memorandum to Robb instructing him to begin a formal investigation of Carlisle's death to be completed as soon as possible.<sup>199</sup> “This investigation should be assigned to experienced, mature and well-qualified Special Agents and all interviews should be handled in a discreet, diplomatic manner,” Hoover wrote.<sup>200</sup> In the course of three weeks, Robb spoke with several witnesses, including Harold Leverett, a local storeowner who was not called as a witness in the state case because he was intoxicated on the night and morning of Carlisle's death.<sup>201</sup> Mitcham

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195 Feb. 23, 1950 Teletype of Report by Special Agent Spencer H. Robb made on Feb. 22, 1950 at Mobile, Ala., at 3.

196 Feb. 23, 1950 Teletype of Report by Special Agent Spencer H. Robb made on Feb. 22, 1950 at Mobile, Ala., at 3.

197 Feb. 23, 1950 Teletype of Report by Special Agent Spencer H. Robb made on Feb. 22, 1950 at Mobile, Ala., at 3.

198 Memorandum from J. Edgar Hoover to James M. McNerney, April 6 1950, FBI File 44-3012.

199 Memorandum from J. Edgar Hoover to Spencer H. Robb, April 14, 1950, FBI File 44-3012.

200 Memorandum from J. Edgar Hoover to Spencer H. Robb, April 14, 1950, FBI File 44-3012.

201 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 2-9.

declined to speak with Robb, while Clark was “unavailable for interview.”<sup>202</sup>

Several months passed before the investigation officially became a federal matter. McInerney told Hoover that U.S. Attorney E. Burns Parker would present the case against the former officers to a federal grand jury on Sept. 19, 1950.<sup>203</sup> The grand jury returned a true bill against both men on the same day.<sup>204</sup> Clark and Mitcham were both arraigned in the Middle District Court of Alabama.<sup>205</sup> They were charged with violating 18 U.S.C. § 242 for depriving Carlisle of his civil rights under the Fourteenth Amendment.<sup>206</sup> The men were also charged under 18 U.S.C. § 52 for violating Carlisle's civil rights, but this count was dismissed before Clark's trial due to a lack of evidence.<sup>207</sup>

## **VI. The History of the Statute**

Section 242 of 18 U.S.C. is the descendant of Section 2 of the Civil Rights Act of 1866, which originated as “an antidiscrimination measure ... framed to protect Negroes in their newly won rights” as free and equal citizens.<sup>208</sup> Senator Lyman Trumbull stated that the purpose of Section 2 was to “protect all persons in the United States in their civil rights, and furnish the means of their vindication.”<sup>209</sup> The legislation specifically targeted actions that a state and its authorized agents would take against a citizen.<sup>210</sup>

Section 2 of the Act read as follows:

“That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains,

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202 Report of Spencer H. Robb, May 3, 1950, FBI File 44-3012, at 2.

203 Memorandum from James M. McInerney to J. Edgar Hoover, Sept. 14, 1950, FBI File 44-3012.

204 Memorandum from James M. McInerney to J. Edgar Hoover, Sept. 22, 1950, FBI File 44-3012.

205 Docket notes, Eastern Division of the Middle District of Alabama, No. 1744-E.

206 Docket notes, Eastern Division of the Middle District of Alabama, No. 1744-E.

207 Trial Tr., 3, Oct. 31, 1950; Docket notes, Eastern Division of the Middle District of Alabama, No. 1744-E.

208 *Screws v. United States*, 325 U.S. 91, 98 (1945).

209 Cong. Globe, 39th Cong., 1st Sess., p. 211

210 *United States v. Trierweiler*, 52 F. Supp. 4, 5 (E.D. Ill. 1943).

or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.”<sup>211</sup>

Its original purposes were to secure civil rights for newly freed African-Americans and to prohibit discrimination under “the Black Codes” -- post Civil War laws in the southern states which restricted the movement and occupations of Negroes.<sup>212</sup> The 1866 Civil Rights Act also prescribed broad civil rights protections for “any person.”<sup>213</sup> Over time, Section 2 of the Act was amended to add additional language and protections. In 1870, the protections were extended to “any inhabitant of any State or Territory.”<sup>214</sup> Legislators added constitutional protections to the statute in 1874, denominating the changes as Section 5510 of the Revised Statutes of the United States:

Every person who, under color of any law, statute, ordinance, regulation, or custom, subjects, or causes to be subjected, any inhabitant of any State or Territory to the deprivation of any rights, privileges, or immunities, secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color or race, than are prescribed for the punishment of citizens, shall be punished by a fine of not more than one thousand dollars, or by imprisonment not more than one year, or by both.<sup>215</sup>

In 1909, the statute gained the word “willfully”:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant

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211 Civil Rights Act of 1866. Section 2

212 Robert K. Carr, *Federal Protection of Civil Rights: Quest for a Sword*, Cornell University Press, Ithaca N.Y. 1947, 37.

213 *Screws v. United States*, 325 U.S. 91, 100 (1945).

214 *Screws v. United States*, 325 U.S. 91, 99 (1945).

215 R.S. § 5510.

of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.<sup>216</sup>

This language became Section 20 of 18 U.S.C. 52. Less than two years before Carlisle's death, the statutory language above was in place as 18 U.S.C. § 242.<sup>217</sup> The Supreme Court had clarified the statute twice before the proceedings against Clark and Mitcham. In 1941, it defined action under color of state law to mean “[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.”<sup>218</sup> In 1945 in the landmark case of Screws v. United States, 325 U.S. 91, 92 (1945), the court heightened the plaintiff's burden of proof by requiring a showing that the defendant acted with specific intent to deprive the plaintiff of constitutional rights

The *Screws* case has many parallels to Carlisle. In *Screws*, a Georgia sheriff and three other law enforcement officers arrested Robert Hall, an African-American man, for allegedly stealing a tire.<sup>219</sup> The officers arrested Hall at his home, handcuffed him and drove him to the courthouse.<sup>220</sup> When Hall got out of the car, the officers claimed that he reached for a gun.<sup>221</sup> The group beat him severely with their fists and “a solid-bar blackjack about eight inches long and weighing two pounds.”<sup>222</sup> The beating continued until Hall was unconscious, which took between 15 and 30 minutes.<sup>223</sup> After Hall passed out, the officers dragged his body by his feet

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216 Ch. 321, 35 Stat. 1092 (1909).

217 18 U.S.C. § 242.

218 United States v. Classic, 313 U.S. 299, 326 (1941).

219 Screws v. United States, 325 U.S. 91, 92 (1945).

220 Screws v. United States, 325 U.S. 91, 92 (1945).

221 Screws v. United States, 325 U.S. 91, 92 (1945).

222 Screws v. United States, 325 U.S. 91, 92 (1945).

223 Screws v. United States, 325 U.S. 91, 93 (1945).



and dumped him onto the jail floor.<sup>224</sup> Hall was taken to the hospital and died an hour later.<sup>225</sup> A federal jury heard the case and found the defendants guilty.<sup>226</sup> Screws and his co-defendants appealed the case to the Supreme Court.

Noting that the statute was too vague for state actors fully to grasp, the Supreme Court ruled that a state actor only violates Section 20 when he does so with specific intent.<sup>227</sup> The court said that a “bad purpose” would not be enough to meet the specific intent standard, effectively ruling out violations of rights motivated only by racism.<sup>228</sup> The majority also held that a state officer who carries out state-proscribed actions is acting under color of state law, clarifying an issue left open in *Classic*.<sup>229</sup>

## VII. The Federal Proceedings

After their arraignment, both men were freed on a bond.<sup>230</sup> The maximum sentence that the men faced was one year in prison and a \$1,000 fine.<sup>231</sup> Mitcham pleaded guilty to a violation of 18 U.S.C. 242 on Oct. 12, 1950.<sup>232</sup> He was sentenced to six months in prison.<sup>233</sup> At the time of his plea, the prosecuting attorneys had not revealed whether Mitcham would be called as a witness against Clark.<sup>234</sup> Clark's attorney filed a motion to dismiss the case prior to the start of the trial, claiming that the indictment did not contain sufficient facts to “constitute an offense against the United States.”<sup>235</sup> He also filed motions for acquittal on the charged counts.<sup>236</sup>

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224 *Screws v. United States*, 325 U.S. 91, 93 (1945).

225 *Screws v. United States*, 325 U.S. 91, 93 (1945).

226 *Screws v. United States*, 325 U.S. 91, 94 (1945).

227 *Screws v. United States*, 325 U.S. 91, 104 (1945).

228 *Screws v. United States*, 325 U.S. 91, 105 (1945).

229 *Screws v. United States*, 325 U.S. 91, 108 (1945).

230 “Federal Grand Jury Indicts Clark and Mitchum in Negro Death,” *The LaFayette Sun*, Sept. 27, 1950.

231 “Free Ex-Cop after Fatal Jail Beating,” *New York Amsterdam News*, Oct. 21, 1950.

232 Memorandum from A. Rosen to Mr. Ladd, Oct. 13, 1950, FBI File 44-3012.

233 Docket notes, Eastern Division of the Middle District of Alabama, No. 1744-E.

234 “Former Policemen Admits Flogging,” *The Mobile Press Register*, Oct. 13, 1950.

235 Trial Tr., 4, 5, Oct. 31, 1950.

236 Trial Tr., 5-11, Oct. 31, 1950.

Clark's federal trial began on Oct. 30, 1950 in Opelika before an all-white jury.<sup>237</sup> U.S. District Judge Charles B. Kennamer presided over the case.<sup>238</sup> U.S. District Attorney E. Burns Parker and Assistant U.S. District Attorney Hartwell Davis prosecuted the case.<sup>239</sup> Jacob A. Walker and R.C. Wallace represented Clark.<sup>240</sup>

As the trial transcript does not contain the opening or closing arguments of either party, the theories of the case have not been preserved in the record. During Attorney Walker's cross-examination of Holloway, he did give some insight into the defense theory. In response to one of Davis's objections, Walker told the court that he admitted that Carlisle had been struck: "The controversy in this case is going to be what occurred at the time the blows were struck."<sup>241</sup>

The case went to the jury at 5 p.m., but the court ordered the jurors to take a supper break prior to continuing deliberations.<sup>242</sup> The court reconvened the next morning at 9 a.m.<sup>243</sup> Fifteen minutes later, the jury returned to ask a question.<sup>244</sup> "Judge, we would like to have further enlightenment on the Fourteenth Amendment and how it applies to the rights of an individual," said foreman William S. Brubaker.<sup>245</sup> The court gave a lengthy explanation, explaining the concept of due process.<sup>246</sup> "And no law officer at no time, under no circumstances, has any right to take the law into his own hands because he is mad and undertake to punish a person," the judge said. "That is not the province of an officer."<sup>247</sup> No objections were recorded during this response. The jury resumed deliberations at 9:30 a.m. and returned with a guilty verdict 15

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237 Docket notes, Eastern Division of the Middle District of Alabama, No. 1744-E; "Jail Pair for Less Than Year," *The Chicago Defender*, Nov. 11, 1950.

238 Trial Tr., 1, Oct. 31, 1950.

239 Trial Tr., 11, Oct. 31, 1950.

240 Trial Tr., 11, Oct. 31, 1950.

241 Trial Tr., 72, Oct. 31, 1950.

242 Trial Tr., 137, Oct. 31, 1950.

243 Trial Tr., 138, Oct. 31, 1950.

244 Trial Tr., 138, Oct. 31, 1950.

245 Trial Tr., 138, Oct. 31, 1950.

246 Trial Tr., 138, Oct. 31, 1950.

247 Trial Tr., 138-139, Oct. 31, 1950.

minutes later.<sup>248</sup>

After the verdict was read aloud, Walker objected to the court's charge.<sup>249</sup> The attorney noted a few exceptions to the charge, disputing that the Fourteenth Amendment applied to “any inhabitant or citizen of the United States” and claiming that a unanimous verdict was required.<sup>250</sup> The judge polled the jury, which confirmed the unanimous verdict.<sup>251</sup> The court ordered \$2,000 bail for Clark pending his appeal, for which J.W. Clark and Joe L. Mitcham acted as sureties.<sup>252</sup> The appeal bail allowed Clark to delay serving his 10-month sentence.<sup>253</sup>

### VIII. James R. Clark's Appeal

Clark's appeal was heard before a three-judge panel.<sup>254</sup> The defendant argued that Judge Kennamer's charge to the jury was “inharmonious” with the “willful” motive requirement of the statute as detailed in Screws.<sup>255</sup> Clark’s attorney honed in on one sentence in the trial judge's charge: “But, now, they may have so far as the law is concerned been ignorant of the provisions that protect them from such conduct, and the only willful knowledge they had was to do the willful acts to deprive him from trial in Court and not to be arrested without a warrant, and not to suffer punishment inflicted on him.”<sup>256</sup> The defendant argued that “he could not willfully deprive the prisoner of a constitutional right if he did not know the right existed.”<sup>257</sup>

The appellate court rejected the argument. In an opinion by Circuit Judge Louie Willard Strum, the court deemed Clark's claim a *non sequitur*.<sup>258</sup> The court found that the trial judge's

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248 Trial Tr., 140, Oct. 31, 1950.

249 Trial Tr., 141, Oct. 31, 1950.

250 Trial Tr., 141-42, Oct. 31, 1950.

251 Trial Tr., 143, Oct. 31, 1950.

252 Trial Tr., 157, Oct. 31, 1950.

253 Docket notes, Eastern Division of the Middle District of Alabama, No. 1744-E.

254 Clark v. United States, 193 F.2d 294, 295 (5th Cir. 1951).

255 Clark v. United States, 193 F.2d 294, 295 (5th Cir. 1951).

256 Clark v. United States, 193 F.2d 294, 296 (5th Cir. 1951).

257 Clark v. United States, 193 F.2d 294, 296 (5th Cir. 1951).

258 Clark v. United States, 193 F.2d 294, 296 (5th Cir. 1951).

translation of legal language into something that the jury could understand acknowledged the statute's "paramount requirement" that Clark would have to act "with a specific intent to deprive Carlisle of his constitutional rights, as distinguished from a mere unlawful assault inspired by personal malice."<sup>259</sup> Looking at the jury instructions overall, the appellate court concluded that the trial judge had stated the law with "substantial accuracy."<sup>260</sup> Thus, Clark's conviction and punishment stood.

## IX. Conclusion

Willie Carlisle's great niece, Leslie J. King, had been interested in her family's genealogy for years, but she was concerned that it would take too much time.<sup>261</sup> Her curiosity was piqued when her mother gave her a copy of King's great-great grandmother's will. "I started wondering who these people were," Leslie King wrote.<sup>262</sup> She took another trip to LaFayette with a group of family members, including her grandfather, Willie Carlisle's brother Eddie. She met some of Willie's sisters on that trip and collected some obituaries, pictures and stories.<sup>263</sup> After Leslie learned that Willie Carlisle had been beaten by the police, she found several newspaper articles about his murder.<sup>264</sup> When she shared them with one of her aunts, her aunt said that she "remembered my grandmother telling her that they beat him up so badly, that you could barely recognize him and that no one wanted to pursue his death because of repercussions."<sup>265</sup>

As of February 2013, Willie Carlisle has two living brothers and two living sisters between the ages of 73 and 98 years old.<sup>266</sup> Unfortunately, his remaining siblings are either ill or

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259 *Clark v. United States*, 193 F.2d 294, 296 (5th Cir. 1951).

260 *Clark v. United States*, 193 F.2d 294, 297 (5th Cir. 1951).

261 Email from Leslie J. King, to author (Jan. 11, 2013, 19:48 EST)(on file with author).

262 Email from Leslie J. King, to author (Jan. 11, 2013, 19:48 EST)(on file with author).

263 Email from Leslie J. King, to author (Jan. 11, 2013, 19:48 EST)(on file with author).

264 Email from Leslie J. King, to author (Jan. 11, 2013, 19:48 EST)(on file with author).

265 Email from Leslie J. King, to author (Jan. 11, 2013, 19:48 EST)(on file with author).

266 Email from Leslie J. King, to author (Jan. 9, 2013, 22:12 EST)(on file with author).

live in nursing homes.<sup>267</sup> It is unclear how much they would remember or know about what happened to their brother. Eddie Carlisle, who was in Ohio when his brother was killed, has said that children were not permitted in the room when adults were talking about “grown folks” stuff.<sup>268</sup>

Willie Carlisle's case exemplifies the rocky path to justice in civil rights matters during this pre-Brown era, and the strained and complicated relationship between the state authorities and the federal government. While the federal government was able to secure a conviction in the South, the former officers both received less than a year in federal prison for the slaying of a young man. The men should have been convicted of murder under state law rather than federal law. The FBI and the U.S. Department of Justice appeared to take Carlisle's murder seriously, but there were limits to their power. The federal statutory penalties in place were not enough to appropriately punish Carlisle's murderers.

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267 Email from Leslie J. King, to author (Jan. 14, 2013, 17:09 EST)(on file with author).

268 Email from Leslie J. King, to author (Jan. 28, 2013, 12:50 EST)(on file with author).