

The Frankfurter Decision in the Williams Case of 1953 is apparently the basis for civil rights law. In this case, Justice Frankfurter ruled for the Supreme Court that in order to try someone under Section 241 of the U.S. Code (the violation of which is a felony) there had to be a charge that both a federally protected right such as due process--and a federally created right like those put into the constitution, freedom of speech, the right to vote, etc., had been violated.

On December 4, 1964, the Justice Department filed "information affidavits" before the U.S. Commissioner, Esther Carter. It is her job to hear these information affidavits and to set bond. She dismissed the evidence included in these affidavits.

In these charges brought under both Section 241 and Section 242, the Justice Department included the fact that both a federally protected right (that Cheney, Goodman and Schwerner's due process) and a federally created right (Cheney, Goodman and Schwerner's right to vote and right to encourage others to vote and the right of free speech) had been violated. U.S. Commissioner Carter dismissed the affidavits.

Then the Justice Department attempted to indict the Philadelphia 17 under Sections 241 and 242 before a grand jury called by Judge Harold Cox. The Philadelphia 17 were indicted. However, in the grand jury indictments, the Justice Department did not include the fact that a federally created right--the right to vote and encourage others to vote--had been violated. They left out the fact that these men were deprived of their lives because they were involved in voter registration work.

Defense attorneys made a motion during the trial that both charges (under sections 241 and 242) be dismissed on grounds that no federally created right had been violated--indeed, the charge was never brought during the trial by the Justice Department. Judge Cox dismissed the charges under Section 241, the felony charges, but did not dismiss the charges under Section 242 which is a misdemeanor.

The Justice Department then appealed to the Supreme Court to overturn Judge Cox's decision to throw out the felony charges of Section 241. The Supreme Court can't possibly hear the case until this coming fall and probably will wait until next year. They can either decide to uphold Judge Cox and throw out the felony charges or overturn Justice Frankfurter's decision of 1953 and overrule Cox.

A lawyer for Mrs. Michael Schwerner mentioned this inconsistency to a reporter who questioned Attorney General Katzenbach about the case. Katzenbach, usually cooperative with reporters, would not talk about the case and didn't cooperate. He recommended that the reporter talk to John Doar.

Mr. Doar was also rather uncooperative, but he finally admitted: "You're right. We did not include the federally created right for this reason: we didn't feel we could prove that Cheney, Goodman and Schwerner were involved in voter registration activities."