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Justice for Rodney King

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This memorandum was written in response to the brutal attack by four white police officers on a black man, Rodney King, in Los Angeles in March of 1991. It was delivered to the Justice Department by the students of Howard University School of Law. The memorandum appears in its original context.

Justice for Rodney King

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TO: George Bush, President of the United States

FROM: The Students of Howard University School of Law

RE: Justice for Rodney G. King

DATE: May 4, 1992

I. INTRODUCTION

We, the students at Howard University School of Law, present this letter for your consideration. The very concept of justice hangs in the balance as the entire nation and the international community recoil in shock from what appears to be a verdict with no rational basis. Fortunately for Rodney King and this country, this miscarriage of justice can be rectified. The first battle has been lost; however, justice can still prevail.

The ideas set forth will establish a clear legal basis for a full and vigorous prosecution of those responsible for the trampling of Rodney King's civil rights. We hope these ideas receive immediate and careful attention.

II. STATEMENT OF FACTS

On March 3, 1991, Rodney King was unmercifully beaten at the hands of several members of the Los Angeles Police Department while other officers stood by and did

nothing. Rodney King was brutally struck at least fifty-six times in eighty-one seconds; his leg was fractured; his face was severely lacerated and disfigured grotesquely; and, his body was jolted by 50,000 volts of electricity applied by a Taser gun. The majority of these blows rained down on a defenseless Mr. King while he was either on his hands and knees or completely prone. None of the four officers tried was convicted on any of the charges relating to the beating of the unarmed Mr. King. This verdict shocked the nation and incited acts of rage in cities across the nation. The only medicine that can heal this nation is justice.

First, we will examine the United States Department of Justice's authority to pursue this case under the department's *Petite* policy. Next, we will examine the applicable criminal civil rights statute. Finally , we will apply the applicable statute to the facts and demonstrate conclusively how this case can be successively prosecuted.

III. PETITE POLICY

The dual sovereignty doctrine permits the initiation of a federal criminal action, despite a previous state court acquittal, without violating the Double Jeopardy Clause of the United States Constitution.[1] Nevertheless, the Department of Justice, under its *Petite* policy, will not pursue every claim otherwise actionable under the dual sovereignty doctrine.[2]

The *Petite* policy expressly authorized criminal prosecution where there is (1) a "substantial federal interest demonstrably unvindicated" in the prior state or federal action and, where, (2) a conviction in the successive proceeding is anticipated. The threshold

1 United States v. Anderson, 940 F.2d 593 (10th Cir. 1991). Abbate v. U.S., 359 U.S. 187 (1959).

2 Specifically, this internal policy "precludes the initiation or continuation of a federal prosecution following a state prosecution...based on substantially the same act, acts or transaction unless there is a compelling interest supporting the dual or successive federal prosecution." U.S. Dept. of Justice, United States Attorney's Manual, at 9-34 (1989-2 Supp.) (Title 9 Criminal Division).

issue in this case is whether a compelling federal interest exists. The Justice Department has specifically stated that civil rights cases are among a priority class "more likely to meet the compelling interest requirement."[3]

A. COMPELLING FEDERAL INTEREST

We can imagine no case more clearly satisfying the compelling federal interest requirement. The federal government has an interest in protecting each of its citizens from brutal force applied under color of law. This interest is bolstered in this case by widespread perceptions that African-Americans are frequent targets of police brutality. Further, the federal government has no greater interest than in addressing the perception that there are two systems of justice: one black, one white. Despair and frustration with this system of justice have resulted in cities in uproar.

Without question, the compelling federal interest test is satisfied. These interests were left wholly unvindicated in the state criminal proceeding and the only remedy lies in the federal court system.

B. ANTICIPATED CONVICTION OF DEFENDANTS

The second prong of the *Petite* Policy requires that the prosecution of the defendant will likely result in conviction. This case will be prosecuted under criminal civil rights statute 18 U.S.C. §242.[4] Successful prosecution under 18 U.S.C. §242 will require (1)

3 *Id.* at 9-38 n. 8 (1989-2 Supp.).

4 18 U.S.C. §242 (1988) states the following:

> Whoever, under color of any law, statute, ordinance, regulation or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being any alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall shall not be fined not more than $1,000 or imprisoned not more than one year, or both;

identifying a constitutional right, (2) proving that this constitutional right was deprived, and (3) demonstrating that the right was willfully deprived.

1. Constitutional Right

The Fourth Amendment provides the right to be free from excessive force, under color of law.[5] This right is at issue in this case. The only significant question is whether this right has been deprived.

2. Violation of the Constitutional Right

In *United States v. Schatzle*[6] the court defined reasonable force as only that force necessary to subdue a suspect: "how much force the agent is entitled to use depends upon how much force of resistance he encounters."[7] Once a suspect is subdued, the level of excessive force may be satisfied by as little as one blow. The case of *United States v. Golder*[8] illustrates this point. In *Golden,* an officer apprehended the victim who had allegedly run a red light. He struck the victim, requiring eight stitches. There was controverted evidence that the officer only struck the victim because the victim was resisting arrest. Even so, the appellate court determined there was sufficient evidence of excessive force to sustain the verdict.

Unlike *Golden,* where only one blow struck the victim, in the King case, the four officers struck Mr. King at least fifty-six times. While in *Golden,* the victim was standing,

and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

5 Graham v. Connor, 490 U.S. 386, 394 (1989).

6 United States v. Schatzle, 901 F.2d 252 (2d Cir. 1990).

7 *Id* at 255.

8 United States v. Golden, 671 F.2d 369 (10th Cir. 1982).

facing the officer before being struck, the defendants in the King case delivered many blows after King was on his hands and knees and still more blows were struck after he was obviously prone. Finally while in *Golden,* the defendant's eight stitches were deemed as evidencing serious injury, in the case at hand, the officers fractured Rodney King's leg, caused extensive facial lacerations, and left King with various head injuries.

3. Willfulness

Willfulness is essentially a question of intent.[9] *Screws v. United States* established that the intent requirement was that of specific intent. (However, the federal courts have now expanded the interpretation of the specific intent requirement). In *United States v. Messerlian*[10], the court included under specific intent "acts committed in reckless disregard of the law as [the defendant] understood it."

The standard of reckless disregard is satisfied when a person acting under color of law consciously disregards a substantial and unjustifiable risk that his conduct will deprive another's constitutional rights or guarantees.[11] Under this test, specific intent can be proved by circumstantial evidence.[12] This is a sound interpretation of the specific intent requirement. We strongly urge that the Justice Department adopt this view in the prosecution of this case.

A specific intent to deprive Mr. King of his constitutional right to be free from excessive force is indicated by racist comments before and after the incident, inappropriate jokes made to Mr. King at the hospital soon after his arrest, and the officers continued assault after he had signaled that he had surrendered. .

9 Screws v. United States, 325 U.S. 91 (1945).
10 United States v. Messerlian, 832 F.2d 778, 791 (3d Cir. 1987).
11 *See* MODEL PENAL CODE §2.02 (c).
12 United States v. Dise, 763 F.2d 586, 592 (3rd Cir. 1985).

IV. CONCLUSION

Based on the foregoing analysis and the legal tests mandated, conviction is nearly certain assuming the following:

First, that an unbiased jury is chosen from a fair cross section of a community with a similar demographic makeup as Los Angeles, CA. Second, and most importantly, that the United States Department of Justice vigorously prosecutes this case. This will require that the Justice Department assign this case the highest priority evidenced by staffing their best personnel and devoting any and all resources which can be brought to bear. Only this level of commitment will ensure that justice triumphs.

cc: William Barr, Attorney General of the U.S. Department of Justice
Congressional Black Caucus