

## DETROIT CHAPTER

### NATIONAL LAWYERS GUILD

#### A Report Concerning The Critical Wounding Of William C. Green by Detroit Police Officer!

At the October, 1961, Executive Board meeting of the Detroit Chapter of the National Lawyers Guild, after considerable discussion of the subject, it was proposed by the Executive Board members that a committee be appointed by President Bernard Fieger to study the circumstances pertaining to the shooting of William C. Green, on September 18, 1961, by Patrolman Abraham Azzam. It was the express desire of the Executive Board that an objective study be conducted with the avowed intention of attempting to reconcile the diametrically opposed positions taken by Assistant Prosecutor George D. Kent and Prosecutor Samuel Olsen in press comments.

It is the purpose of this report to set out the findings of fact by the Committee; the applicable Michigan Supreme Court and U.S. Supreme Court decisions pertinent to the facts of this case; and to make certain conclusions and recommendations with the hope that each and every member of our community will in some measure benefit thereby, regardless of the personal opinions of the members of the Committee or of the prosecutor's staff as to the guilt or innocence of any of the persons involved in the incident that is the subject of the following report.

On Monday, September 18th, William C. Green, 31 years old, was sitting in his car with two friends, and fellow employees; Levester Jordan, age 31, sitting in the front seat next to Mr. Green, and Young D. Simmons, age 33, sitting in the rear seat of the automobile. The auto was parked on Commonwealth street at Grand River Avenue. Mr. Green had been released from Veterans Hospital on the morning of the day in question because of a diabetic condition, and had returned to work with Mr. Simmons and Mr. Jordan. Mr. Jordan is a painting and masonry contractor, and the other two men are employed by Mr. Jordan. After completing their work for the day, the men had stopped at the above location on Commonwealth to let one of the men out of the car, and were engaged in general conversation.

Patrolman Abraham Azzam, age 25, a member of the Detroit Police Department for the past four and one-half years, and Patrolman John Tabor, age 22, who was on duty for the first time since being graduated from the Detroit Police Academy, were patrolling what is called "Beat No. 2" on Grand River Avenue, when, according to the formal statement of Officer Azzam, "I stopped at Commonwealth and Grand River, near that corner, and investigated three men". The automobile was, in the opinion of the two officers, illegally parked because the rear end of the car was too far from the curb, and no other reason was advanced at any time by either officer for the initial arrest.

The two officers approached the automobile, and requested identification from the three men. Mr. Green, without any request from the officers got out of the car and promptly furnished proper identification for himself, and as the owner of the automobile. Mr. Jordan identified himself, but Mr. Simmons was unable to produce identification that was satisfactory for the officers, and was rejected by Officer Azzam as insufficient.

Patrolman Tabor stated in his formal statement that Officer Azzam noticed a "handle" on the floor of the car, partly sticking out from under the front seat, which turned out to be the handle of a hatchet. Officer Azzam, however, stated that he merely looked down into the auto and saw the metal end of the hatchet. After Mr. Jordan and Mr. Simmons were asked to get out of the automobile, the officers searched under the seat of the car and found wire cutters and a hammer. During, or previous to the search, Mr. Jordan casually took the hatchet to the rear of the auto, opened the trunk and placed the hatchet into the trunk, and remarked to the officers that the hatchet was used, in conjunction with other tools of their trade that were in the trunk, to trim wooden stakes in the laying of forms when

engaged in cement work, and he closed the trunk of the car.

Officer Azzam then ordered the three "suspects" across Grand River Avenue to the location of a police call box. On the way to the call box, Mr. Green remarked that he may owe some traffic tickets. The three men were told to line up against a store front, and Officer Azzam stated to his fellow officer that "We have three B & E's", meaning, of course, three breaking and entering suspects. Officer Azzam commenced to make his call, and there is testimony that Officer Azzam used anti-Negro language at this point. Mr. Green became angered, and told the officers (Officer Azzam specifically) that they had absolutely no right to detain them, and, according to the officers, Mr. Green became belligerent and agitated.

The witnesses offer contradictory statements at this point, but it appears as though Mr. Green was going to depart from the scene, and Officer Azzam started to or did use his arm or hands to push Mr. Green back into line, and, according to Officer Tabor, Mr. Green struck Officer Azzam in the head and it "looked like a closed hand".

A struggle followed, and, from all of the witnesses, Officer Azzam began beating Mr. Green over the head with a "slap-jack", until Mr. Green, with both hands on his head, began running down Grand River Avenue, and was crossing Brainard Street at the alley when Officer Azaam shot him in the back. Neither Mr. Jordan nor Mr. Simmons ever attempted to enter the fight, and Officer Tabor did not enter the fight between Mr. Green and Officer Azzam. Mr. Green was taken to Receiving Hospital and treated for the bullet wound, and was held as a police prisoner. Mr. Jordan and Mr. Simmons were also taken into custody, but were released without charge subsequently. Mr. Green is still hospitalized, and is partly paralyzed from the shooting.

Assistant Prosecutor George D. Kent was assigned the investigation of the case, and took formal statements from nine persons, including both officers, Mr. Simmons and Mr. Jordan, and five disinterested eye witnesses to the incident, on the very evening of the shooting. After his initial investigation, Mr. Kent released a statement accusing Officer Azzam of using "poor judgment", stating: "We can't have police officers running around shooting people for parking violations". Prosecutor Samuel Olsen, however, did not agree with Mr. Kent, and stated in a press release that he would make the final determination of the incident after a complete investigation, and clearly implied that Mr. Kent's remarks were premature. Prosecutor Olsen placed Chief Trial Attorney, John W. Coury in charge of the case, and Mr. Coury took an additional twenty statements on the next day, and subsequent to the day of the shooting.

On September 22, 1961, Prosecutor Olsen made his determination of the case, and cleared Officer Azzam of any wrongdoing, stating that he "acted lawfully in the course of his duty, and was entirely free from any criminal negligence". This decision was based upon the following: the improper parking of the automobile; the lack of satisfactory identification of the occupants; the existence of the hatchet, wire cutters and hammer; "the attempt to conceal the hatchet in the trunk of the car"; the general attitude and belligerence of Mr. Green; Mr. Green's "unprovoked and unjustifiable attack upon the officer"; and Mr. Green's flight from the officer. Quoting from Mr. Olsen's press release:

Evaluating Officer Azzam's conduct in the light of the circumstances which confronted him and ad the circumstances reasonably appeared to him, it is my opinion that he was justified in his honest belief that Green was fleeing in order to escape arrest for the commission of a felony, and that his duty required that he take the action which he did in order to prevent his escape.

Rules and Regulations of the  
Detroit Police Department.

Use of Firearm in Police Action.

Section 25. "To Use in Extreme Cases.

A police officer must not use his revolver except in extreme cases. He may use it in self-defense when necessary; that is, he may use it when it is necessary to save his own life or to protect himself from serious bodily injury, but he is not permitted to use it to protect himself from assaults that are not likely to have serious results. What the officer may do in his own defense, he is authorized and required to do in defense of a prisoner whom he has in his custody. The same is true of any citizen or brother officer upon whom a dangerous assault is made in his presence. When it is considered that this state, even after conviction of murder, does not invoke the death penalty, then police officers should use firearms only under certain restricted and justifiable circumstances. Firearms may be used when it is necessary to apprehend or prevent escape of a known felon, when the capture or recapture of the felon cannot be accomplished by any other means or when absolutely necessary in the defense of his own life or the life of a citizen.

Section 26. Must Not Shoot Upon Mere Suspicion.

The revolver must not be used against persons who are running away to escape arrest except in extreme cases. If the officer actually sees a person commit a crime such as murder, rape, burglary, arson, or the like, he may shoot to prevent escape if the perpetrator cannot be apprehended by any other means. Especially is this true if the officer does not know who the criminal is and the crime is likely to go unpunished if the criminal is permitted to escape. The officer should not fire upon a person who is called upon to halt upon mere suspicion, and who, without making resistance, simply runs away to avoid arrest. Neither should the officer fire at a person who is running away to avoid arrest for a minor offense. In all cases the officer should bear in mind the danger there may be of injuring innocent persons when firing his revolver. No officer has the right to extend his power but must decide his action in light of the circumstances confronting him within the limitations of his authority".

Excerpts taken from "REVISED DETROIT POLICE MANUAL" (Revised January 1, 1958)

PART III.

Conclusion.

If a system of law tolerates a violation of law on the part of those specially charged with its enforcement, then society itself suffers. It is debasing for any man to take an oath to obey the law and then to be allowed to continually violate the law. Once a police officer adopts a standard of conduct other than the law of the land, the chances are greatly enhanced that, in an emergency, he will fail to draw the line between the fundamental and the unessential and will violate the former along with the latter. And, failure of police officers to act according to the fundamental law, sets a bad example for ordinary citizens, and arouses hostility toward the police.

The history of liberty has largely been the history of observance of procedural safeguards. Presumably, whomever the police arrest, they must arrest on probable cause. It is not permissible for the police to make investigative arrests, and subsequently attempt to justify such unlawful arrests with facts, later acquired, giving rise to probable cause.

The police department does not operate in a vacuum, but is directly and indirectly influenced by every facet of our society. Dis-

crimination and segregation are unhappy facts in our society. The legislatures, the courts, prosecutors, bar associations, civic organizations, and newspapers have been slow to take the positive measures necessary to eliminate this ugly cancer. Police officers are underpaid; there has not been the systematic training and discipline in the police department essential to inculcate full understanding of the constitutional rights of our citizens; prosecutors have been reluctant to prosecute police officers who violate the law in the course of their tour of duty; judges have been lax in interpreting probably cause.

In this matter, the Prosecuting Attorney, Mr. Samuel Olsen, did a substantial disservice to the cause of justice by rushing to issue a press release which mistates the applicable law, and which contains a biased summary of the facts at hand at the time of its issuance.

On the basis of all of the facts, we conclude:

1. If Officer Azzam believed there was improper parking, his duty was clear ... that was to issue a parking ticket. Officer Azzam has testified, however, that he never informed any of the occupants of the car that they were illegally parked and he had no right to arrest for illegal parking, under the applicable law.

Since the arrest was illegal, the officer's subsequent conduct in shooting to prevent escape was illegal.

2. The occupants of the car had no duty to produce identification to an officer who was making an illegal arrest. But, while there is a dispute about the identification produced by one or two of the occupants of the automobile, the absence of identification is not probable cause that a felony has been committed.

3. The existence of the hatchet among other tools customarily used in the construction business occasioned no concern on the part of Officer Azzam and both he and Officer Tabor indicated in their statements that the tools were casually removed to the trunk of the automobile, and not, as the Prosecuting Attorney stated, did any one of the men attempt to "conceal the hatchet in the trunk of the car".

4. No witness suggested that Mr. Green said that there were outstanding warrants against him. The only testimony was to the effect that he may have owed some parking tickets. The testimony showed that this remark was made after the illegal arrest.

5. There is no doubt that Mr. Green's attitude was hostile, and the testimony indicates that he resented being illegally arrested, and particularly resented being referred to with anti-Negro expressions unworthy of one whose duty it was to uphold the law.

6. While there is a factual dispute as to who inflicted the first blow, Mr. Green or Officer Azzam, the right of a citizen to resist illegal arrest makes the fact of Mr. Green's altercation with the officer, and his subsequent flight from the scene, irrelevant to the case.

We make the following recommendations as to Officer Azzam:

1. Officer Azzam should be subjected to trial by the Police Trial Board;
2. The City of Detroit should compensate Mr. Green for the damages for his wrongful injury.

In connection with the broader aspects of the matter, we make the following recommendations:

1. The Commission on Community Relations should be given authority to receive and process complaints of mistreatment by police officers with the duty to present its findings and conclusions to the Police Board or other agency for appropriate action.

2. Intensive Police Academy training in constitutional rights of citizens, and expanded in-service lectures and disciplinary procedures which will create respect for the rights of citizens, and eliminate the all too extensive use by police officers of derogatory terms in reference to members of minority groups.

3. Publicity to alert citizens of the agencies available with respect to complaints of unlawful police practices.

4. Adequate salaries for police officers.

5. Capital punishment has long been abolished in Michigan, even after trial and conviction of the most heinous crimes.

When a police officer uses his gun to prevent the escape of a citizen from arrest, the punishment of severe injury or death is meted out instantaneously by one man, without trial. The circumstances under which such extreme action is permitted are severely circumscribed in law.

The condonation by the Prosecutor of the use of this supreme power in cases of arrests for traffic violations, where there was no danger to the officer or to any other person, is contrary to the letter and spirit of our political system. It should be condemned as a distorted approach to law and justice by the principal law enforcement official in our community!