

CIVIL RIGHTS DIVISION
Notice to Close File

File No. 144-3-1469

Date: _____

To: Chief, Criminal Section

Re: Unknown – Subjects;
Dr. Elsie Jean Cowsert (Deceased) – Victim;
CIVIL RIGHTS

It is recommended that the above matter be closed for the following reasons:

1. Date of the Incident: January 29, 1967
2. Synopsis of the Facts and Reasons for Closing:

Dr. Elsie Jean Cowsert was a white physician attempting to aid in the desegregation of the local hospital, the Mobile Infirmary, where she worked. As part of her desegregation efforts, she covertly provided information to officials from the U.S. Department of Health, Education, and Welfare concerning the Mobile Infirmary's efforts to prevent patient desegregation in its facilities. On January 29, 1967, Dr. Cowsert was found shot to death in front of her home in Mobile, Alabama. She was shot in the chest at close range and broken glass from a side window was found in her pocket. Local newspaper articles and her death certificate indicate that local law enforcement ruled her death to have been self-inflicted and accidental.

Maraya L. Best
Attorney

To: Records Section
Office of Legal Administration

The above numbered file has been closed as of this date.

Date

Chief, Criminal Section
FORMERLY CVR-3 FORM CL-

Although the circumstances around Dr. Cowsert's death are suspicious, it is not possible to federally prosecute anyone for Dr. Cowsert's death. No suspects have ever been identified either by local officials or by academics reviewing the case. Our review of the case, including a review of case documents and archival records, interviews of family members, and discussions with community members and academics who have studied the unusual circumstances surrounding Dr. Cowsert's death, has not produced any leads that could result in the prosecution of any living person. Although it is possible that Dr. Cowsert may have been killed due to her civil rights activities, it also remains possible that her death was due to another unknown motive or even that it was accidental as it was initially ruled. Accordingly, no prosecution could establish, beyond a reasonable doubt, that Dr. Cowsert was murdered, and that her murder was committed because of her civil rights activities. Finally, the statute of limitations has run on all federal hate crimes, and there is no other potential basis for federal jurisdiction.

Although the Emmett Till Unsolved Civil Rights Crime Act¹ (the "Till Act") and its Reauthorization² authorize the Department of Justice ("the Department") to refer cold cases to state and local jurisdictions for prosecution, such a referral is not appropriate in this case. The Department's review of this matter has not produced evidence sufficient to prosecute any living suspects on any state charge. Therefore, the case is being closed without prosecution or referral to the state.

3. Background

Dr. Elsie Jean Cowsert (known as Dr. Jean Cowsert) graduated first in her class from the University of Alabama Medical School in 1954. After medical school, she moved back to her hometown of Mobile, Alabama, and began practicing medicine at Providence Hospital. She lived with her aging parents who owned a plant nursery. During her time at Providence, Dr. Cowsert converted to Catholicism and became close friends with the nuns from the Daughters of Charity of Saint Vincent de Paul, with whom she worked. In 1966, she was elected President of the Medical Staff.

During this time, the civil rights movement was in full swing. In 1964, the United States passed the Civil Rights Act, which, *inter alia*, prohibited using federal funds for racially segregated programs or activities. In response, Dr. Cowsert began taking steps to integrate Providence Hospital. In 1966, with the creation of Medicare, the Johnson Administration began a push to desegregate hospitals, withholding Medicare funding from those that failed to comply. The same year, Dr. Cowsert attended a speech by President Lyndon B. Johnson on Medicare and the importance of desegregation. As a doctor with admitting privileges, i.e., permission to work and see patients at the Mobile Infirmary, Dr. Cowsert took it upon herself to help with this fight. She began covertly reporting to officials at the U.S. Department of Health, Education and

¹ Pub. L. No. 110-344, 122 Stat. 3934 (2008).

² Pub. L. No. 114-325, 130 Stat. 1965 (2016).

Welfare's Office of Equal Health Opportunity (OEHO)³ on the Mobile Infirmary's failure to integrate. The officials to whom she reported considered her a vital source of inside information.

On January 29, 1967, while this desegregation fight was ongoing, Dr. Cowser's stepfather found her body in front of their house. She was dead at 41 years of age. Her cause of death was a gunshot wound to the chest. Local police reportedly ruled it self-inflicted and an accident. Glass shards found in her pocket matched a broken window on the side of her house. Additionally, an unfinished letter by Dr. Cowser to a friend was rumored to have been found in the home.

An OEHO official also recalled in a later interview⁴ that the OEHO office was notified of Dr. Cowser's death by an administrator at Mobile Infirmary. According to this OEHO official, the Infirmary administrator should not have known that Dr. Cowser was working with OEHO. Even more concerning, Dr. Cowser's death and this subsequent notification allegedly occurred after a different OEHO official spoke to Dr. Cowser from an unsecured telephone line, which was a break in prior protocol for speaking with Dr. Cowser.

During this time, many other activists were working on ending the *de facto* segregation that still existed across institutions in Mobile. One such civil rights leader was John LeFlore who, amongst many other civil-rights-related activities, also consulted with OEHO on hospital desegregation in Mobile and even compiled a list of "negrophobe" doctors in the Mobile area. Likely because of these activities, on June 28, 1967, the same year that Dr. Cowser died, LeFlore's house was firebombed by person(s) unknown.

Given the prevalence of violence in Alabama at the time,⁵ and the unusual circumstances surrounding Dr. Cowser's death, many people understandably believe her death was a result of her desegregation work and was not an accident. As a result, the Civil Rights and Restorative Justice Clinic at Northeastern University reviewed this case and subsequently referred it to the Cold Case Unit of the Department's Civil Rights Division.

4. The Current Till Act Investigation

An eligible entity referred this matter to the Department for review under the Till Act. The Till Act authorizes the Department to identify, investigate, and (when warranted by the evidence) prosecute violations of criminal civil rights statutes that resulted in death and occurred

³ This office, the precursor to the Department of Health and Human Services' Office of Civil Rights, was charged with determining whether hospitals were in compliance with the Civil Rights Act.

⁴ This interview was conducted by Professor David Barton Smith, who the Department consulted in its Till Act investigation.

⁵ In addition to the bombing of John LeFlore's home in 1967, racial and civil-rights-related violence pervaded Alabama during the civil rights movement and beyond. Prominent examples include the following: in 1965, law enforcement officers violently attacked civil rights protesters attempting to march from Selma to Montgomery in an incident known as Bloody Sunday; in 1966, Samuel Younge, a Black man, was shot after a dispute broke out with a white man when Younge allegedly attempted to use a "whites only" restroom in Tuskegee; and in 1981, a Black teen named Michael Donald was lynched in Mobile by members of the Klan.

before 1980. The Department opened this case for review and assembled an investigative team with members from the Civil Rights Division's Cold Case Unit, the U.S. Attorney's Office for the Southern District of Alabama, and the FBI.

After opening this matter, members of the investigative team met with two professors who had already investigated this case: Professor David Barton Smith and Professor Michael Meltsner. Professor Smith, an expert on health management and policy, learned about Dr. Cowsert's case through research on segregation in healthcare. Professor Meltsner, a civil rights attorney, learned about Dr. Cowsert's death while he was working on desegregation in the South in the 1960s.

In addition to speaking with these individuals about their research into Dr. Cowsert's death, the investigative team took the following steps:

- Requested records from federal, state, and local law enforcement offices and reviewed available materials from their files.⁶
- Reviewed news articles from the time of Dr. Cowsert's death.
- Interviewed Dr. Cowsert's friends and family.
- Reached out to the families of some of Dr. Cowsert's now-deceased colleagues to determine if those colleagues ever spoke about her death.
- Reached out to local historians, universities, and community members for documents and leads.
- Reviewed FBI files on other instances of violence in Alabama during the same period.
- Interviewed a former civil rights worker who was in Mobile during the period.
- Interviewed a former assistant state toxicologist who assisted on the investigation into Dr. Cowsert's death.
- Reviewed records collected and created by Professor Smith, Professor Meltsner, and Northeastern University's Civil Rights and Restorative Justice Clinic.

This investigation failed to yield any new leads.

a. Review of prior investigative efforts

The investigative team began its evaluation of this case by reviewing prior investigations into Dr. Cowsert's death before making independent inquiries and tracking down leads.

i. The 1967 investigation

The Mobile Police Department (MPD) initially investigated Dr. Cowsert's death. According to newspaper articles, however, this investigation was closed less than a week after her death when the coroner ruled that Dr. Cowsert had accidentally shot herself.

⁶ These offices include the Mobile Police Department, the Alabama Department of Forensic Sciences, Alabama Law Enforcement Agency, the FBI, and the National Archives. In response to the Department's request, the only documents related to this case that the Alabama Department of Forensic Sciences was able to locate was a copy of the state toxicologist's report. No other agencies were able to locate any materials from this case.

There were no witnesses to Dr. Cowsert's death, and her elderly parents did not question the official cause-of-death determination put forward by the police.

The only records from the initial investigation that the investigative team was able to locate were a copy of the state toxicologist's report. The first page of this report lists the "type of case" as a suicide. The assistant toxicologist who helped prepare this report, however, stated that this determination would have been made by the police. And according to newspapers and Dr. Cowsert's death certificate, the coroner determined that Dr. Cowsert's cause of death was an accident.

ii. Academic investigations

Professors Smith and Meltsner, along with the Civil Rights and Restorative Justice Clinic at Northeastern University, conducted extensive research into this case. Professor Smith interviewed members of the OEHO team as well as some of Dr. Cowsert's colleagues in Mobile, including the former coroner, Dr. Earl Wert. The investigative team reached out to Professor Smith, who agreed to participate in several voluntary interviews. Professor Smith also provided the investigative team with notes of his earlier interviews. The Civil Rights and Restorative Justice Clinic conducted follow-up research on this case and voluntarily provided all their materials to the investigative team as well. The professors and student volunteers who worked on this case all formed the opinion that Dr. Cowsert was murdered, likely due to her civil rights activities; however, despite their extensive investigations, none was able to identify any specific suspects or witnesses.

b. Conclusions from the Current Investigation

The Civil Rights Division's Cold Case Unit reviewed all documentation provided by academics and conducted additional public source research. The Division also reached out to Dr. Cowsert's next of kin, her colleagues and friends amongst the Daughters of Charity of Saint Vincent de Paul, the next of kin of some of Dr. Cowsert's other colleagues, law enforcement officials, and other members of the community. Additionally, the Division searched the Health, Education and Welfare records at the National Archives and contacted other local records repositories, such as Providence Medical Center and the Mobile Medical Museum, for relevant records. Lastly, the Division reviewed FBI reports of other violent incidents that occurred in Alabama in the same time period to identify any potential overlapping leads. None of these investigative steps yielded any potential suspects.

As a part of this inquiry, the investigative team requested the original 1967 case records from state and local law enforcement offices and received a copy of the original toxicologist's report. Although the first page of the report characterizes the "type of case" as a "suicide," the report also indicates Dr. Cowsert was shot in the chest. According to research, this is an unusual way to commit suicide, particularly for a woman.⁷ None of Dr. Cowsert's friends or family knew

⁷ I.C. Stone, *Observations and statistics relating to suicide weapons*, 32(3) J. FORENSIC SCI. 711 (1987) (finding the location of entrance wounds for victims of suicide by gunshot was about three times more frequently the head than the chest); Veljko Strajina, et al., *Forensic issues in suicidal single gunshot injuries to the chest: an autopsy study*,

of her having suicidal thoughts or ideations, and some mentioned hearing that an unfinished letter to a friend was found inside the house after she died, as if she were interrupted while writing. Additionally, as reported by newspapers and mentioned in the toxicology report, there was a broken window on the side of her house and glass from the window was found in her pocket on the night she died. These surrounding circumstances make it unlikely that Dr. Cowser died by suicide. In fact, the former assistant toxicologist who assisted with the investigation into Dr. Cowser's death confirmed that either the coroner or the police would have been responsible for characterizing her death as a suicide, and there is nothing in the contents of the toxicology report that indicates suicide *per se*.

The toxicology report also includes a section on firearm testing. The former assistant toxicologist confirmed that, in Mobile, at the time the report was prepared, the toxicologist oversaw firearms testing. According to the report, the weapon found on the scene was a .38 caliber English Webley revolver which, at the time, was a standard-issue service pistol for the armed forces of the British Empire. The report states that this gun was not a single-action revolver. Therefore, according to FBI experts, the gun's design would prevent an accidental discharge (e.g., after being dropped); this type of gun can be fired only by pulling the trigger. Additionally, according to the report, the measurement of the trigger pull on this gun was twenty-three pounds, which FBI experts confirmed is a heavy trigger pull. This makes it unlikely, although not altogether impossible, that the shooting was an accident.

Notably, the firearms portion of the toxicology report does not confirm whether the gun examined was owned by Dr. Cowser or even handled by her. According to her family, Dr. Cowser owned a gun, and newspaper reports indicate that the gun found on scene was Dr. Cowser's. However, this conclusion is not established in the official documentation currently available to investigators. The toxicology report provides that the police submitted the .38 Webley and a fired hull to the toxicologist for testing. It does not indicate that this gun belonged to Dr. Cowser or if she was found holding it. Moreover, the former assistant toxicologist told investigators that any fingerprints on the gun would have been collected and compared by the police, not the toxicologist's office. Therefore, without the police file or coroner's report in this case, which the investigative team were unable to recover, we cannot determine if Dr. Cowser held this gun.

33(4) AM. J. FORENSIC MED. PATHOL. 373 (2012) (finding that across genders, in instances of suicide, gunshots to the chest are significantly less common than gunshots to the head); J.W. Eisele, et al., *Sites of suicidal gunshot wounds*, 26(3) J. FORENSIC SCI. 480 (1981) (finding that, in suicide by firearm, the head was the most typical site; that in the case of handguns, gunshots to the temple are even more prevalent, accounting for nearly two thirds of wounds; and that only 25% of women studied chose to take their own life by gunshot); Augustine J. Kposowa & James P. McElvain, *Gender, place, and method of suicide*, 41 SOC. PSYCHIAT. EPIDEMIOL. 435 (2006) (finding that the primary method of suicide by women was drug poisoning, accounting for over 40% of the studied deaths, and firearms was the second most used method, at over 26%); Valerie J. Callanan & Mark S. Davis, *Gender differences in suicide methods*, 47 SOC. PSYCHIATRY PSYCHIATR. EPIDEMIOL., 857 (2012) (finding that the use of firearms accounted for around 38% of deaths by suicide for women and noting that according to other studies the number of female firearm suicides eclipsed female poisoning suicides during the 1980s and 1990s); Mary Monk, *Epidemiology of Suicide*, 9(1) EPIDEMIOLOGIC REVIEWS 51 (1987) (finding the use of firearms amongst women who take their own lives increased over time: "two fifths of women used firearms to commit suicide in 1980, compared with one fifth in 1950").

According to the toxicologist's report, the fired hull found inside the gun was likely fired from the gun. But the report does not indicate that the bullet that killed Dr. Cowsert was from this fired hull or conclude how recently the gun was fired. According to the former assistant toxicologist, it was standard practice to compare bullets recovered from bodies or found on scene to those fired from recovered weapons, if possible. But nothing in the report indicates that the toxicologist's office ever received or examined a bullet or bullet fragments from Dr. Cowsert's body or from the scene.

The former assistant toxicologist also confirmed that investigators did not have the technology to test for gunshot residue at the time, but the report does note powder burns on Dr. Cowsert's clothing, likely indicating that she was shot at close range.

The investigative team also received and reviewed a copy of Dr. Cowsert's death certificate from 1967. Unlike the toxicology report, the death certificate lists her cause of death as "gunshot wound of heart, self-inflicted, accidental." However, it is again unclear without the autopsy report or police file exactly how this was determined, given that the limited information in the toxicology report is insufficient to establish that Dr. Cowsert accidentally shot herself.⁸

Accordingly, it appears that Dr. Cowsert was killed by person or persons unknown or that something/someone caused her to accidentally shoot herself. Without further documentation or witness statements, the investigative team cannot reach a more definitive conclusion.

5. Legal Analysis

The Till Act investigation into Dr. Cowsert's death is being closed because it cannot be federally prosecuted. No suspects have been identified in this case. Even if a suspect were identified, other barriers would likely preclude a federal prosecution, including the fact that the statute of limitations has run on every possible federal civil rights offense. As such, the matter will be closed without prosecution.

Although circumstances surrounding her death are suspicious, at this time the Department would be unable to prove beyond a reasonable doubt that Dr. Cowsert died as the result of a homicide as opposed to an accident or suicide. Moreover, the Department has developed no leads sufficient to identify any person (living or dead) who might have been responsible if her death was, in fact, a homicide. Without a living subject, the Department cannot proceed with a prosecution.

Even if there were known suspects in Dr. Cowsert's death, and those suspects were alive, there would be other insurmountable barriers to a federal prosecution.

⁸ The autopsy report may have provided investigators useful information in this regard, such as whether Dr. Cowsert had powder burns or her own blood on her hands, indicating that she had fired the weapon. And information in the police file may have confirmed that the gun in question belonged to Dr. Cowsert (e.g., confirming, through her parents, her ownership of the gun, or confirming, through fingerprint analysis, that she had at least held it).

Most fundamentally, the statute of limitations has expired on any prosecution that could be brought under any federal civil rights statute.⁹ And at the time Dr. Cowsert was killed in 1967, there were no federal hate crime statutes.¹⁰

Additionally, without a suspect or additional evidence it is impossible for the Department to conclude that Dr. Cowsert was killed due to her civil rights activities. At this time, no prosecution could establish, beyond a reasonable doubt, that Dr. Cowsert's death was not a self-inflicted accident, and that her homicide was committed because of her civil rights activities.

The Department has used non-civil-rights statutes to overcome the statute of limitations challenge in a small number of cases, such as those involving kidnapping across state lines, *see United States v. Seale*, 600 F.3d 473 (5th Cir. 2010), or offenses occurring on federal land, *see United States v. Avants*, 367 F.3d 433, 440 (5th Cir. 2004). However, Dr. Cowsert's death did not occur on federal lands or involve transportation across state lines, and there is no evidence that any other federal statute applies. For these reasons, the government cannot now federally prosecute anyone for Dr. Cowsert's death.

The Till Act and its Reauthorization provide that the federal government can assist state or local governments in prosecuting cold cases when the cases cannot be prosecuted federally. However, referral to the state is not appropriate here because neither the federal nor local investigation identified any suspects involved in Dr. Cowsert's death.¹¹

6. Conclusion

Dr. Cowsert's death was a tragic loss for her family, the community, and the civil rights movement.¹² However, after a thorough evaluation of all available evidence, the Civil Rights Division concludes that this matter should be closed, as there is no basis for federal prosecution or referral to the state at this time. The United States Attorney's Office for the Southern District of Alabama concurs with this recommendation.

⁹ The civil rights laws that did exist in 1965 largely required proof that a defendant acted under color of law. Prior to 1994, these statutes were not capital offenses, thereby subjecting them to a five-year statute of limitations, which has long since expired. *See* 18 U.S.C. § 3282(a).

¹⁰ The first federal hate crime statutes, 18 U.S.C. § 245 and 42 U.S.C. § 3631, were enacted in 1968.

¹¹ Anyone with additional information about Dr. Cowsert's death may contact the Criminal Section of the Civil Rights Division at: Coldcase.Civilrights@usdoj.gov. The Cold Case Unit has the authority to reopen a cold case if new, material information is uncovered.

¹² In fact, only a month after Dr. Cowsert's death, despite no apparent changes in its practices, the Mobile Infirmary was finally approved to receive Medicaid funds. There was no longer anyone on the inside to provide OEHO concrete information about the Infirmary's actual status in its process of desegregation.