

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-40-2153

Date 07/16/2011

To: Chief, Criminal Section

Re: Unknown Subject,
Oxford, Mississippi;
Paul L. Guihard (Deceased) - Victim
CIVIL RIGHTS

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

I. Case Synopsis

On October 1, 1962, James Meredith became the first African-American student to register for classes at the University of Mississippi. Meredith's registration came only after numerous federal court orders and against the virulent opposition of Mississippi Governor Ross Barnett and his many segregationist supporters across the South. On the night before Meredith's registration, violent rioting broke out on the university campus. The rioting became so dangerously uncontrollable that President Kennedy ordered armed military troops to quell the violence. Hundreds were injured during the rioting, and two men died. One of those men, Paul Guihard, was a French reporter covering the Meredith desegregation story. Forensic evidence

William E. Nolan
Trial Attorney

To: Records Section
Office of Legal Administration

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

Date

Chief, Criminal Section

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revealed that Guihard's death was caused by a single .38 caliber bullet fired at close range entering his body through the back and striking his heart. There are no known witnesses to this shooting, and ballistic testing of the firearms seized, or otherwise suspected of having been used, during the rioting failed to produce a match to the .38 caliber bullet recovered from Guihard's body. Despite an extensive investigation, no subject has ever been identified.

II. Background

A. James Meredith and the Desegregation of the University of Mississippi

James Meredith was born and raised in segregated Mississippi. He enlisted in the United States Air Force after graduating high school in 1951. After an honorable discharge in 1960, Meredith returned to Mississippi and registered for college coursework at the all-black Jackson State College. During that time, Meredith became active in the struggle to improve conditions for African-Americans and to break the hold of segregation in Mississippi. Meredith decided that he would pursue enrollment in the all-white University of Mississippi. While in Jackson, Meredith introduced himself to Medgar Evers, the then-Mississippi Field Secretary for the NAACP. Meredith convinced Evers, and eventually NAACP Legal Defense Fund counsel Thurgood Marshall, that his admission to the University of Mississippi was a meritorious case worthy of NAACP legal representation. On January 31, 1961, Meredith applied for admission to the University of Mississippi, making it clear in his application that he was not "a white applicant," but instead "an American-Mississippi-Negro citizen." Four days later, on February 4, 1961, the University denied Meredith admission.

The University's denial of Meredith's application began a year and a half of legal proceedings between Meredith, represented by the NAACP, and the State of Mississippi. On December 12, 1961, Judge Mize of the United States District Court for the District of Northern Mississippi ruled against Meredith, finding that the University's denial of his admission was not based on racial grounds. The U.S. Court of Appeals for the Fifth Circuit reversed on January 12, 1962. On February 3, 1962, the District Court again ruled against Meredith. The Fifth Circuit again reversed on June 25, 1962, finding that the University's denial of admission was based solely on Meredith's race, and ordered Meredith's admission. Judge Cameron of the Fifth Circuit, however, issued a stay against the Court's mandate for Meredith's admission. The full Fifth Circuit Court vacated the stay, but Judge Cameron granted a second stay, and then a third, having them each vacated by the full Court. Finally, after Judge Cameron's fourth stay, the matter went to the United States Supreme Court. On August 31, 1962, the Department of Justice filed an amicus brief with the Supreme Court on behalf of Meredith's admission. Justice Hugo Black, after consultation with the other Supreme Court Justices, vacated the fourth stay and ordered the State to cease "taking steps to prevent enforcement of the Court of Appeals mandate."

As Meredith's case wound its way through the federal court system, Mississippi Governor Ross Barnett continued his public campaign against Meredith's admission. Supported and

influenced by the powerful Citizens Council, Barnett gained popularity by taking a hard-line stance against desegregation. On September 13, 1962, the Governor declared that he would go to jail before “admitting a Negro to the University of Mississippi,” and invoked the so-called doctrine of “interposition,” in a televised speech that night. Barnett’s speech was a fiery defense of segregation and states’ rights, stating:

“We must either submit to the unlawful dictates of the Federal Government or stand up like men and tell them ‘Never!’ The day of reckoning has been delayed as long as possible. It is now upon us. This is the day, and this is the hour.”

Barnett then repeated his promise that, “No school will be integrated in Mississippi while I am your Governor.” Barnett concluded by stating: “I do hereby interpose the rights of the Sovereign State of Mississippi to enforce its laws and to regulate its own internal affairs without interference on the part of the Federal Government or its officers.”

On September 20, 1962, Department of Justice officials (including then-Civil Rights Division attorney John Doar) and United States Marshals (including then-Chief U.S. Marshal James McShane) escorted Meredith to register at the University of Mississippi in Oxford. Governor Barnett temporarily appointed himself as registrar and refused to register Meredith. The Department of Justice filed contempt proceedings that same day, which were dismissed by the District Court, but upheld by the Fifth Circuit. On September 25, Meredith again attempted to register, this time at the state office in Jackson. Despite the contempt of court charges, Governor Barnett again turned Meredith away. A third unsuccessful attempt to register occurred the next day in Oxford, when Meredith was turned away by Lt. Governor Paul B. Johnson. By all accounts, the scene in Oxford was now growing tense. Outsiders, including known Klansmen from outside of Mississippi, were coming to Oxford as a show of support to the Governor’s continued refusal to register Meredith. In light of the growing tension in Oxford, a fourth attempt to register was called off on September 27 before Meredith and his federal escorts even reached the campus.

B. Guihard dispatched to Mississippi

Meredith’s attempts to register, and the Governor’s continued efforts to block Meredith had become a story of national and international interest for the press. On September 30, 1962, the New York office of the French news agency, Agence France Presse, dispatched reporter Paul L. Guihard to Mississippi to cover the Meredith story. Guihard, a 30-year-old reporter, had worked for the news agency for 10 years. He held dual British-French citizenship. Guihard arrived in Jackson with his photographer, Sam Schulman, and rented a car to drive to the Governor’s Mansion. There, Guihard observed a Citizens Council rally of approximately 3,000 people. According to reports, the people gathered at the rally were encouraged to form a human wall around the Governor’s Mansion to prevent Barnett’s arrest by U.S. Marshals. Guihard phoned in a report from the headquarters of the Citizens Council located across the street. Guihard reported: “The crowd laughed and sang under the warm autumn sun, and it was apparent it hadn’t the vaguest idea of the enormity of its actions.” Guihard concluded, “the Civil War has

never ended.” After phoning in his report, Guihard and Schulman left Jackson for Oxford.

C. Guihard killed during the rioting on University of Mississippi campus

On September 30, 1962, sometime before 7:00 p.m., federal officials secretly moved Meredith onto the university campus and stayed with him in a secure dormitory. Meanwhile, approximately 400 U.S. Marshals entered the campus along with troopers from the Mississippi Highway Safety Patrol. According to reports, the Marshals lined up shoulder to shoulder outside of the Lyceum Building in the center of campus where Meredith was to register the next morning. Large groups of protestors, numbering over two thousand by news reports, gathered in front of the Marshals, yelling insults directed at the Marshals and Meredith. Unaware that Meredith was already on campus, the crowd swelled in anticipation of his arrival. At approximately 8:00 p.m., the Highway Patrol troopers reportedly left the campus, and the crowd grew louder and more volatile. The troopers would later return and man the entrance and exit gates around the campus, but did not join the Marshals in front of the Lyceum Building. Shortly thereafter, someone from the crowd threw a pipe that struck a Marshal in the helmet. This first act of violence triggered a barrage of rocks, bricks, and bottles from the crowd toward the Marshals. The Marshals held their ground, and fired canisters of tear gas back into the crowd. By all accounts, the protest quickly turned into a violent riot. Reportedly, the crowd attempted to drive a car and bulldozer toward the Marshals. Gunfire could be heard in the crowd. By 10:00 p.m., most of the students in the crowd had dispersed, but outsiders continued to join the violence. President Kennedy eventually ordered some 16,000 armed military forces from the 82nd and 101st Airborne Divisions and a federalized Mississippi National Guard to quell the violence. By the time order was restored by an overwhelming show of military presence in the early morning hours of October 1, over 150 Marshals had been wounded, some from gunfire. Hundreds more in the crowd suffered injuries, and two men died, including Paul Guihard.

By most reports, Guihard and Schulman arrived on campus at approximately 8:40 p.m., just as President Kennedy concluded his speech to the nation stating that there was “no reason why the books on this case cannot now be quickly and quietly closed in the manner directed by the court.” In contrast to the President’s words, the crowd had already turned violent, and according to all reports from the evening, a dangerous riot was taking place on the university campus. Guihard and Schulman were stopped briefly at an entrance gate by a Highway Patrol trooper who warned that he could not guarantee the reporters’ safety. The two men pressed on, parked the car, and split up after agreeing to meet back in an hour. Schulman reported seeing Guihard walk in the direction of the Lyceum Building. Two other men reported seeing Guihard alive that evening, but the timing of the events is not entirely clear. Guihard, a large, red-haired, French-speaking man with a beard, would likely have stood out in the crowd. It appears that a photographer, Flip Schulke, saw Guihard as he headed toward the crowd and warned him to be careful and “get down.” It is also reported that another reporter, Clark Porteous of the *Memphis Press-Scimitar*, encountered Guihard, and the two men spoke for a moment. Porteous, who was raised in New Orleans, spoke French, and reported that he and Guihard were speaking French during their brief encounter.

According to a student, XXXXXX, he and XXXXX, XXXXX, discovered Guihard sometime before 9:00 p.m., lying on his back with his feet extended into the sidewalk. His body was located near the southeast corner of the Ward Dormitory, approximately 12 feet from the building's wall. This location was about 35 yards from the rear of the Fine Arts Building, and about 500 yards from the Lyceum Building. XXXXX stated that he believed Guihard had suffered a heart attack and so he removed Guihard's glasses and began massaging his heart in an effort to revive him. Reportedly, some other people began to gather and attempted to call an ambulance service. According to a reporter on the scene, XXXXXX, he and XXXXXXX, a photographer, saw Guihard on the ground surrounded by several people. XXXXXX helped to move Guihard to a nearby dormitory. XXXXXX, a student working with XXXXXXXX at the Student Health Center, stated that he, XXXXXX, and two other persons with a private car transported Guihard to Oxford Hospital. Reportedly, Guihard was already dead upon arriving at the hospital, where it was determined that he did not die of heart attack, but rather by a single gunshot to the back. There were no reported witnesses to the shooting.

III. Federal Review

A. 1962 FBI investigation of the violence against James Meredith and federal officials at the University of Mississippi

In the days and weeks following the riot on the night of September 30, 1962, the Federal Bureau of Investigation conducted extensive investigations of the violence directed toward James Meredith and the federal officials carrying out the judicial order to admit Meredith to the University of Mississippi. While the Guihard homicide was considered by the FBI to be a matter of local investigation and prosecution, the shooting was part of the ongoing violence taking place on the university campus that night, and thus, the FBI took extraordinary steps to identify the person and the weapon responsible for killing Paul Guihard.

After being pronounced dead at the Oxford Hospital, Guihard's body was transferred to the Douglas Funeral Home in Oxford, where Guihard's XXXXXX, XXXXXXXX, identified Guihard's body and signed for his personal belongings. Guihard's body was then transferred to the City Morgue in Memphis, Tennessee, where an autopsy was performed. The autopsy confirmed that Guihard died of a single gunshot wound in which the bullet entered his body in the middle of his back and traveled an upward direction striking his heart. The City Morgue provided Guihard's clothing and the bullet extracted from his body during the autopsy to the Lafayette County Sheriff's Office, which in turn provided the clothing and the bullet to the FBI. The bullet and the clothing were submitted to the FBI Laboratory for analysis. According to the FBI Lab reports, the bullet was a .38 caliber and made of lead, consistent with Remington and Peters ammunition. The bullet was fired from a revolver with general rifling characteristics of five lands and grooves right twist, consistent with Smith and Wesson revolvers. The bullet was, therefore, likely either fired from a Smith and Wesson .38 Special or .357 Magnum. The FBI Lab concluded that the individual microscopic markings on the bullet allowed for suitable comparison and identification testing. The analysis of the powder residue present on the back of Guihard's coat indicated that the revolver was fired from less than a foot from Guihard's back.

The City Morgue transferred Guihard's body back to the Douglas Funeral Home. Arrangements were made by attorneys representing Guihard's parents to have his body returned first to New York, and then to Saint Malo, France, where Guihard was buried.

The FBI immediately began testing the many weapons and pieces of ammunition found and seized during and after the riot, comparing the evidence to the bullet recovered from Guihard's body. Eventually, the Department of Justice made the decision to test the firearms of the U.S. Marshals present on campus that night. This decision came after continued criticism of the Marshals from political leaders across the South, accusing the Marshals of being "trigger happy" and recklessly firing into the crowd of protestors. As the FBI continued to investigate possible leads, agents collected additional firearms suspected of being used that night, and submitted them for testing at the FBI Lab. In all, the FBI tested 470 firearms, over 300 of which belonged to U.S. Marshals. The vast majority of the tested handguns belonging to the Marshals were Smith and Wesson models, either .38 Special or .357 Magnum calibers. Hundreds of pieces of ammunition were seized or collected and tested at the FBI Lab. None of the firearms or ammunition tested, however, matched the bullet that killed Guihard.

In the immediate aftermath of the riot, the U.S. Marshals and military troops detained 212 protestors, many of whom were armed with handguns and rifles. Only 45 of the men detained were college students, and only 24 of those 45 were students at the University of Mississippi. Most of the protestors were eventually released and not charged with any federal law violations. The federal government charged 12 detained protestors for violations relating to the violence against the Marshals, specifically assaulting and impeding officers engaged in official duty, 18 U.S.C. § 111, conspiracy to impede or injure a federal officer, 18 U.S.C. § 372, insurrection, 18 U.S.C. § 2383, and seditious conspiracy, 18 U.S.C. § 2384. Of the 12 detained men charged, four were eventually indicted by a federal grand jury. Among the four men indicted was XXXXXXXX, a Georgia resident described as a "professional agitator" and allegedly a member of the American Nazi Party. XXXXXXXX sent a telegram to Governor Barnett ahead of his arrival in Oxford, stating that he was willing to volunteer his "services, arms and munitions." XXXXXXXX travelled to Oxford with two rifles, and was carrying one of the rifles when he was arrested by Marshals on the night of September 30th. The FBI tested the rifle seized from XXXXXXXX, but it did not match the bullet that killed Guihard. XXXXXXXX was tried and acquitted in July 1963.

The other three men indicted were XXXXXXXX, XXXXXXXX, and XXXXXXXX. The three men came to Oxford from Pritchard, Alabama, in XXXXXXXX. The three men were thought to be located near the Fine Arts Building during the riot, not far from where Guihard's body was discovered. Cartridges from .38 caliber bullets were found in the area near the Fine Arts Building, and when tested by the FBI Lab, were found to have been fired from the .357 Magnum belonging to XXXXXX and seized from XXXXXX at the time of their arrest – approximately 7:00 a.m. on October 1, 1962. Further testing, however, concluded that the .357 Magnum did not fire the bullet that killed Guihard. Although XXXXXXXX admitted to owning .38 caliber revolvers, no such guns were ever found or tested. An additional 50 rounds of .38 caliber ammunition was found in XXXXXXXX on October 3, 1962, in Oxford. Also found in

XXXXXX's car was a printed postcard addressed to President Kennedy, asking the President to: "Please take notice that I respectfully resent the unnatural warfare being waged against the sovereign State of Mississippi and urge that you give more serious attention to facing up to the Communist menace and our Cuban problem." When XXXXXXXX was arrested at about 4:00 a.m. on October 1, 1962, he was carrying 11 .38 caliber short cartridges (as well as 13 pills reported to be Benzedrine or "bennies"). The United States tried all three men in June 1963, but dismissed the charges against XXXXXXXX during the trial. The jury acquitted XXXXXX and XXXXXXXX.

The FBI investigation continued for months after the riots and agents interviewed over 1,000 persons, including students, faculty, federal officials, military personnel, Oxford residents, persons detained or otherwise present during the riot, persons associated with those detained during the riot, persons suspected of encouraging others to travel to Oxford, journalists, and photographers. One particular lead investigated by the FBI involved a possible witness to the Guihard shooting. Reportedly, a journalist present during the riot stated that "a man wearing dirty white trousers" approached him at approximately 7:00 a.m. on October 1, 1962, and told him that he saw Guihard "killed," but did not provide further information before walking away from the reporter. The FBI and the Lafayette County Sheriff investigated whether the man in the "dirty white trousers" may have been XXXXXXXX, an XXXXXXXX sailor in the U.S. Navy present during the riot. The FBI determined, however, that XXXXXXXXXX was in custody of the U.S. Marshals on the morning of October 1, having been arrested during the riot the night before. Given the vagueness of the description, the FBI was not able to identify the man "wearing dirty white trousers."

In addition to the many interviews, the FBI reviewed video and audio footage recorded by news agencies present on campus during the riot. The FBI also collected fingerprints from the evidence collected; reviewed phone records from individuals suspected to be involved in the rioting; seized and analyzed various leaflets and printed materials protesting Meredith and the President of the United States; seized more than a dozen cars; and tracked many more license plates of vehicles on or nearby campus.

The FBI also investigated reported connections between the Citizens Council, the Ku Klux Klan, and the riot at the University of Mississippi. FBI informants provided some leads on Klan members in Alabama who encouraged others to travel to Oxford and protest Meredith's admission. Further investigation identified several persons from Alabama who were present during the riot. However, FBI interviews and ballistic testing failed to provide any connection between these persons and the Guihard shooting. Other leads from university faculty led to the investigation of the Citizens Council encouraging students to protest Meredith's admission. Again, however, no connection could be made to the Guihard shooting.

The FBI also monitored and reported on the expulsion proceedings of several students from the University of Mississippi for their participation in the riot, as well as on the findings of the Lafayette County grand jury which sought to place blame for the violence on the U.S. Marshals. As noted above, the federal government took extraordinary measures to test the firearms of the U.S. Marshals. The Lafayette County Sheriff's Office and the Mississippi

Highway Safety Patrol, however, did not provide any weapons to the FBI for ballistic testing.

Despite the FBI's extensive investigation, no witnesses to Guihard's shooting were located. No subjects were ever identified, and no firearms or ammunition tested ever matched the bullet recovered from Guihard's body.

B. 2009 FBI investigation into Guihard's death

In 2009, the FBI initiated a review of the circumstances surrounding Guihard's death, pursuant to the Department of Justice "Cold Case Initiative" and the Emmett Till Unsolved Civil Rights Crime Act of 2007, Pub. L. No. 110-344, 122 Stat. 3934 (2007), which charges the Department of Justice to investigate violations of criminal civil rights statutes that occurred prior to 1970 and resulted in death. Outlined below are the steps taken by the FBI to investigate Guihard's death.

Working with the FBI Lab and other FBI field offices, the FBI Jackson Division retrieved the investigative files related to the rioting at the University of Mississippi and Guihard's death. All the existing files had been archived at the National Archives and Records Administration ("NARA"). The FBI reviewed over a thousand archived documents relating to the events at the University of Mississippi on September 30 and October 1, 1962. Through this review, the FBI was able to outline the steps taken by federal agencies and local law enforcement in the weeks and months following the riots related to Guihard's death. These steps -- which included hundreds of FBI interviews, the retrieval and ballistic analysis of the bullet that killed Guihard, and the forensic testing of approximately 450 weapons -- are discussed above.

To supplement the information from the archived material, the FBI conducted research on the riot at the University of Mississippi, reviewing many books and dozens of news articles written on the subject. Several of the books and articles, most notably William Doyle, An American Insurrection: James Meredith and the Battle of Oxford, Mississippi, 1962 (2003), provided information that, when considered with the information from the archived materials, assisted in detailing the events surrounding Guihard's death. Other books referencing Guihard's shooting that provided pertinent information included: Gene Roberts and Hank Klibanoff, The Race Beat: The Press, The Civil Rights Struggle, and the Awakening of a Nation (2007); Bob Schieffer, This Just In – What I Couldn't Tell You On TV (2003); Maurie H. Beasley and Sheila J. Gibbons, Taking Their Place: A Documentary History of Women and Journalism (1993); Donald McQuade and Robert Atwan, Popular Writing in America: The Interaction of Style and Audience (5th ed. 1993); Dan Rather with Mickey Herskowitz, The Camera Never Blinks – Adventures of a TV Journalist (1987); Walter Lord, The Past That Would Not Die (1965); Michael Dorman, We Shall Overcome (1965).

In addition to the review of the archived investigative files and general research, the FBI reached out to other potential sources of information regarding major events from the Civil Rights Era. On February 4, 2009, The FBI sent a letter to the Southern Poverty Law Center ("SPLC") requesting any information the SPLC had collected about Guihard's death. The SPLC had

referenced Guihard in its publication, Sara Bullard, Free At Last: A History of the Civil Rights Movement and Those Who Died in the Struggle (1993). The SPLC responded in April 2009 with a research file containing news accounts from the time period, as well as several recent articles on the renewed interest in civil rights cold cases and current events planned at the University of Mississippi to remember Guihard. The file also included federal government documents from the FBI and the Department of Defense obtained through Freedom of Access to Information Act (“FOIA”) requests, as well as several documents provided by Guihard’s employer, Agence France Presse.

In February 2009, the FBI received a report from Syracuse University students entitled, The Civil Rights Murder of Paul Guihard, A Public Memory Project. The report was dated Fall 2008, and provided similar information as the archived investigative files and compiled research.

To further obtain information on the Guihard shooting, the FBI contacted the NAACP; the Mississippi Attorney General’s Office; the University of Southern Mississippi; the Mississippi Department of Public Safety, Mississippi Crime Lab Division; the Mississippi Department of Archives and History; the Lafayette County Sheriff’s Office; and former United States Attorney, H.M. Ray. None of these contacts, however, produced any relevant information.

After compiling and reviewing the historic information on Guihard’s shooting, the status of the FBI investigation remained much the same as the murder investigation at the time of the Guihard’s death. The review produced few viable investigative leads. There remained no known witnesses to the shooting. Worse still, the physical evidence from the case, specifically Guihard’s clothing and the bullet that killed Guihard, was no longer in the possession of the FBI Laboratory. While ballistic reports and photographs of the bullet still existed, such evidence is of limited value for comparison purposes. To complicate matters, even if the gun that fired the fatal bullet could be presently located, the comparison of two bullets separated by nearly 50 years between discharges would likely be inconclusive due to the gun’s expected wear and deterioration. As part of the Cold Case Initiative, the FBI investigated all relevant and available leads.

1. Investigation of possible witness to the shooting

One of those leads involved a potential witness to the Guihard shooting noted in the retrieved FBI files. On November 6, 1962, the FBI interviewed XXXXXXX, age XXX, a XXXX living and working in Jackson, Mississippi. XXXXX was present at the riot on the night of September 30, having been hired by CBS News to cover the Meredith story. XXXXXXX told investigators how he witnessed the crowd that night swell to over 2,000. The crowd gathered across the street from the Lyceum Building, which was surrounded by a line of U.S. Marshals. According to XXXXXXX, the crowd jeered and taunted the Marshals, and eventually grew violent breaking windows of automobiles and throwing bottles and bricks toward the Marshals. XXXXXXX changed his location around the area of the Lyceum Building several times as the Marshals fired tear gas canisters into the crowd. At about 10:30 p.m., XXXXXXX noticed a crowd of people near the girls’ dormitories and later learned that the people were gathered around

Guihard's body. About ten months later, in August 1963, XXXXXX contacted the FBI because he had since learned that a boy and a girl were reportedly standing near Guihard at the time of the shooting. In November 1963, XXXXXX had learned that the girl's name was XXXXXX, a then-student at the University of Mississippi, and he reported this information to the FBI. XXXXXX did not know the boy's name, but suspected that XXXXXX would probably know that information. The retrieved FBI files and compiled information did not provide any follow-up information on XXXXXXXX.

On June 7, 2011, the FBI interviewed XXXXXXXX. XXXXXXXX recalled the night of the riot, but stated that she did not witness Guihard's shooting. XXXXXXXX stated that she was in a dorm room with other people when they saw Guihard from their window. Guihard was lying on his back and not moving. According to XXXXXXXX, they all went outside, and someone placed a pillow under Guihard's head. XXXXXXXX also remembered that someone called the police, and when the police arrived they returned to their dorm rooms. XXXXXXXX could not remember the names of the other persons with XXXX at the time.

2. Investigation related to gun possibly used during the riot

A second lead involved a news story from the Clarion-Ledger in April 2009. In the story, author and journalist Hank Klibanoff encouraged anyone with information on Guihard's death to come forward. After reading the story, XXXXXX contacted the newspaper. XXXXXXXX told the newspaper that when he was XXX years old his family moved to a house in Oxford shortly after the September 30th riot. He recalled a winter day in 1962 when a man from Alabama came to his front door and explained that he had been in Oxford during the riot and left something in the basement of the house that he needed to retrieve. The man said that the house had been empty and appeared abandoned when he was there several months back. XXXXXXXX allowed the man to enter the basement and XXXXXXXX watched as the man retrieved a handgun wrapped in a cloth from inside of the furnace pipe. The man actually dropped the gun and joked about it not going off. XXXXXXXX remembered the gun as being larger than a .22 caliber, but smaller than a .44 or .45 caliber. The man then left through the basement door with the gun and drove away.

On May 6, 2009, the FBI interviewed XXXXXXXX and he retold essentially the same story as he did to the newspaper. XXXXXX said that the house was on the corner of XXXXXX Street and XXXXXX Street in Oxford. XXXXXXXX described the man from Alabama as "rustic, mid to late 20's, average height, average weight, he was not dressed up or dressed down, spoke normally probably with a southern accent, and the man did not look like a college student." XXXXXXXX did not recall anyone accompanying the man or any details about the man's vehicle. XXXXXXXX added that his mother is still alive, but suffers from dementia.

While the XXXXXXXX interview did not provide any viable leads as to the owner of the gun found in the basement or any connection to Guihard's shooting, there is a possible connection between the XXXXXXXX and ammunition seized shortly after the riot. On October 3, 1962, the FBI interviewed XXXXXXXX, an Oxford resident who claimed to have seen a XXXXXX pull into the driveway of XXXXXXXX Street on the morning of October 1, 1962, between 10:00 and 11:00

a.m. XXXXXX claimed that the house was unoccupied at the time. XXXXXX said that there were two white males about 25 years of age in the car. One of the men got out of the car and walked into the open garage, and when he returned to the car, the car drove away. XXXXX explained that later “officials came to the house and found ammunition in it.” The FBI showed XXXXXXX the XXXXXXX that belonged to XXXXXXX, but XXXXX could not positively identify XXXXXX’s car as the car she saw in the driveway of XXXXXXX Street. Moreover, XXXXXXX, XXXXX, and XXXXXXX had already been placed under arrest and in custody of the U.S. Marshals between 10:00 and 11:00 a.m. It is possible that the unoccupied house at XXXXXXX Street was, in fact, XXXXXXX’s home, as the address is located near the corner of XXXXXXX Street and XXXXXXX Street. Further, it is possible that the man who retrieved the gun from the XXXXXXX basement was connected to the men XXXXXXX witnessed in the XXXXXXX. There are, however, no viable connections between these incidents and Guihard’s death.

3. Investigation related to rifle possibly used during the riot

Finally, a third lead involved an author who contacted the FBI regarding a museum exhibit in Oxford, Mississippi. While conducting research for a book, biographer XXXXXX toured the University Museum in Oxford. The tour guide pointed to a rifle on display in the museum and stated that it was the gun used to kill Paul Guihard. In May 2009, XXXXXX provided photographs of the rifle and the attached tag which appears to be the original evidence tag from the federal officer that seized the weapon from XXXXXXX. As discussed above, XXXXXX was tried and acquitted of federal charges related to violence against the Marshals on the night of the riot. The ballistic testing of the bullet that killed Guihard demonstrated that Guihard was killed with a .38 caliber bullet fired either from a Smith and Wesson .38 Special or .357 Magnum. The rifle on display in the University Museum may have been the rifle seized from XXXXXXX on October 1, 1962, but it was not the gun that killed Paul Guihard.

IV. Legal Analysis

This matter does not constitute a prosecutable violation of federal criminal civil rights statutes. First, despite extensive efforts at the time and renewed efforts in recent years, no subject or witness has been identified. Second, even if a living subject could be identified, there is insufficient evidence to demonstrate that Guihard’s killing violated a federal criminal civil rights statute enacted at that time. For example, there is no evidence that the subject acted under color of law, as required by 18 U.S.C. § 242, or that the subject conspired with another person or persons as required by 18 U.S.C. § 241.

Finally, prior to 1994, federal criminal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations. See 18 U.S.C. ' 3282(a). In 1994, some of these civil rights statutes, including 18 U.S.C. ' 242, were amended to provide the death penalty for violations resulting in death, thereby eliminating the statute of limitations. See 18 U.S.C. ' 3281 (“An indictment for any offense punishable by death may be found at any time without limitation.”). However, the *Ex Post Facto* Clause prohibits the retroactive application of

the 1994 increase in penalties and the resultant change in the statute of limitations to the detriment of criminal defendants. Stogner v. California, 539 U.S. 607, 611 (2003). While the Civil Rights Division has used non-civil rights statutes to overcome the statute of limitations challenge in certain cases, such as those occurring on federal land and involving kidnapping resulting in death, the facts of the present case do not lend themselves to prosecution under other such statutes.

Based on the foregoing, this matter lacks prosecutive merit and should be closed. AUSA Robert Coleman, Northern District of Mississippi, concurs in this recommendation.