

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-41-3581

Date April 12 2010

To: Chief, Criminal Section

Re: Noah Smith (Deceased),
Mack Smith (Deceased),
Charles Falvey (Deceased),
Brookhaven, Mississippi - Subjects;
Lamar Smith (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On the morning of August 13, 1955, Lamar Smith, an African-American World War I veteran active in voter registration drives, was shot and killed outside the Brookhaven, Mississippi, courthouse. The victim had worked on the campaign of a man running against the incumbent in a county supervisor race. The run-off election for the supervisor was to take place days after the shooting. Three white men, Noah Smith, Mack Smith, and Charles Falvey, were arrested for the shooting. According to an August 17, 1955 *Daily Worker* article, a state Coroner's Jury heard testimony for four hours on the night of August 16 and then ruled that the

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To: Records Section
Office of Legal Administration

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

4-12-2012
Date

Chief, Criminal Section

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victim had died as a result “of a gunshot wound in an altercation with Noah Smith, Mack Smith and Charles Falvey and probably other parties unknown.”¹

In September 1955, a state grand jury reportedly heard from 50 to 75 witnesses but adjourned before taking any action. According to media accounts, the witnesses denied seeing anything. In January 1956, Mike Carr, the newly elected local District Attorney empaneled another grand jury and subpoenaed several witnesses but no new evidence was developed to support an indictment, despite indications that numerous people would have witnessed the murder.

Shortly after the shooting, the Federal Bureau of Investigation (FBI) began monitoring the state investigation detailed above and providing updates to the Department of Justice. During that investigation, Brookhaven Police Department XXXXXXXXXXX “volunteered” that the victim had been selling African-American absentee ballots to the campaign of the challenger for the county supervisor office and that the subjects, who supported the incumbent, argued with the victim and then shot him. After the shooting, the victim ran about 30 yards and then collapsed. According to XXXXX, XXX was the first person to examine the victim’s body at the scene and found a .32 caliber pistol in the victim’s right pocket.

Similarly, XXXXXX, who was active in the local political reform movement, told the FBI that subject Noah Smith was an active supporter of the incumbent county supervisor and objected to the victim encouraging people to vote by absentee ballot. As a result, Noah Smith and the other two subjects argued with the victim and then shot and killed him.

All three subjects are deceased.

2008 Federal Review:

In the fall of 2008, the FBI initiated a review of the circumstances surrounding the victim’s death, pursuant to the Department of Justice’s “Cold Case” initiative and the “Emmett Till Unsolved Civil Rights Crime Act of 2007,” which charges the Department of Justice to investigate “violations of criminal civil rights statutes . . . result[ing] in death” that “occurred not later than December 31, 1969.” The FBI retrieved from the National Archives and Records Administration (NARA) the 1955 FBI file relating to the incident; contacted Mississippi law enforcement officials; conducted searches of the Mississippi Department of Archives and History (MDAH) and the University of Southern Mississippi library records; sent letters to both the Southern Poverty Law Center (SPLC) and the NAACP requesting information; and solicited information about the case via a press release that was published in local newspapers and broadcast on local television and radio stations.

¹ Local district attorney E.C. Barlow was quoted in the *Daily Worker* article as saying that the murder was “politically inspired.” None of the materials gathered by the FBI indicate specifically how the three subjects were identified as the perpetrators.

The FBI case agent interviewed XXXXXXXXXXXX, the victim's XXXXX. XXXXXXXX stated the victim was shot while delivering absentee ballots for the upcoming county supervisor election. XXXXXXXX said that XXX had learned that the day before the shooting, three white men, likely the subjects, brought whiskey to an XXXXXXXXXXXXXXX of the victim, XXXXXXX XXXXXXX. XXXXXXX had been instrumental in convincing the victim to go to the Brookhaven courthouse on the day he was shot, thus leading XXXXXXX to believe that the subjects had conspired to ambush the victim.

The FBI obtained the subjects' death certificates and determined that subject Noah Smith died on June 17, 1975; subject Mack Smith died on September 14, 1992; and subject Charles Falvey died on December 26, 1987.

The FBI also contacted officials at the **Circuit Clerk's Office at the Lincoln County Courthouse** in Brookhaven, Mississippi; the **Lincoln County Chancery Clerk's Office**; the **14th Circuit Court District Attorney's Office**; the **Lincoln County Sheriff's Office**; the **Brookhaven Police Department**; the **Lincoln County Coroner**; the **Mississippi Department of Public Safety**; **Mississippi Attorney General's Office** and determined that none of those offices had records pertaining to the shooting.

Additionally, the case agent contacted **Keith Beauchamp**, Civil Rights Cold Case historian and film-maker, who provided a copy of a documentary he had filmed on the case. The documentary, that featured a number of the victim's nieces and nephews, provided significant background relative to the civil rights movement but no additional facts concerning the murder of Smith.

An FBI search of **SPLC** records found no records relevant to the victim's death. As of the date of this memorandum, the **letter to the NAACP** has also yielded no information.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, the federal government cannot prosecute the three identified subjects because they are deceased. The local Coroner's Jury ruled that "probably other parties unknown" were involved in the murder but those parties have never been identified.

Second, 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 kidnapping resulting in death, the facts of the present case do not lend themselves to prosecution under other statutes.

Based on the foregoing, this matter lacks prosecutive merit and should be closed. Additionally, because the subjects are deceased, this matter will not be forwarded to the state for prosecutive review. AUSA Glenda Haynes, Southern District of Mississippi, concurs in this recommendation.