

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-19-2766

Date MAY 2 2010

To: Chief, Criminal Section

Re: Officers W.O. Dempsey (Deceased) et. al,  
Atlanta Police Department,  
Atlanta, Georgia - Subjects;  
Joseph Franklin Jeter, Sr. (Deceased) - Victim  
CIVIL RIGHTS

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

**Case Synopsis**

On September 13, 1958, Joseph Franklin Jeter, Sr., the African-American victim, was shot and killed by Atlanta Police Department (APD) Officer W.O. Dempsey. Shortly before the shooting, Dempsey, and subjects Lieutenant Ellis Barrett, Officer Ned C. Oliver, Officer Andrew W. Jones, and Officer David R. Turner responded to a report of a man, later identified as XXXXXXX, pointing a gun inside a drug store. The subject officers reported that when they arrested XXXXX and placed him in a patrol car, a very large crowd approached and began yelling at them. Among them was XXXXX, the victim XXXXX. The officers claimed that

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Cristina Gamondi  
Attorney

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To: Records Section  
Office of Legal Administration

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

5-2-10

Date

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Chief, Criminal Section  
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when Oliver attempted to arrest XXXX the victim struck Oliver from behind, knocking him to the ground. At that point, the victim, XXXXX jumped on top of Oliver. Believing that the victim was trying to take Oliver's service weapon, Dempsey shot and fatally wounded him.

The majority of the civilian witnesses gave statements to the APD contradicting the subjects' version of the events. Specifically, the witnesses stated that the officers beat XXXXX after arresting him and when a woman from the crowd, XXXX protested, they began beating her too. The XXXXXXXXXXXX approached the officers in attempt to intervene and stop them from beating XXXXX. An officer grabbed XXXXX around the neck and lifted him off the ground, while another officer struck him. The victim started to cross the street toward the officers to explain that XXXXX was the housing project manager. At that point, an officer, likely Oliver, crossed the street and pushed the victim back, while Dempsey shot the victim.

The matter was presented to a Fulton County grand jury that heard testimony from about 30 witnesses over the course of ten days. On September 30, 1958, the grand jury announced that it had declined to indict Dempsey, determining that he had acted in defense of himself and his fellow officers.

On September 30, 1958, the victim's XXXXXXXX were tried in Recorder's (municipal) Court. During the six-hour hearing, Dempsey, Oliver, Barrett, and several civilian witnesses testified. The judge found the victim XXXXX guilty of resisting arrest, assaulting an officer, creating a disturbance, and cursing. The judge sentenced XXXXX 30 days in jail for each of the four offenses but then suspended all four sentences. The judge sentenced XXXX to one 30-day suspended sentence, XXXXX to two 30-day suspended sentences, and XXXX to 60 days.

Dempsey died on September 17, 1993; Jones died on November 9, 1994; Oliver died on July 25, 1996; Barrett died on November 23, 2003; and Turner died in February 1978.

### **Federal Review**

In the fall of 2008, the Federal Bureau of Investigation (FBI) opened an investigation into 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 obtained the APD investigative file, the personnel files for all subjects except Dempsey, and a number of contemporaneous newspaper articles. The FBI also conducted searches of Georgia death records and various databases, and contacted XXXXXXXX subject XXXXXXXX.

### **Subjects' accounts**

Lieutenant Barrett, and Officers Dempsey, Oliver, Jones, and Turner submitted reports on the day of the shooting.<sup>1</sup> All five subjects were white. Barrett, Dempsey, and Oliver also

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<sup>1</sup> Dempsey and Oliver submitted a joint report, Jones and Turner submitted a joint report, and Barrett submitted a report alone.



XXXXX stated that when XXX tried to speak to XXXXX an officer hit XXX and XXX struck back. At that point, two other officers grabbed XXX, handcuffed XXX, and placed XXX on the ground. An officer stomped his foot across XXX head, while another struck XXX on the top of the head. They then took XXX to a patrol car and struck XXX again.

XXXXX stated that XXXXX approached the officers to intervene and stop them from beating XXXXXX. An officer grabbed XXXXX around the neck and lifted XXXXX off the ground, while another officer struck XXXXX.

XXXXXXXXX and XXXXXX stated that they saw officers hitting XXXXXXXXX and XXXXXX confirmed that XXXXXX attempted to intervene but an officer grabbed XXXXX from behind, while XXXXXX stated that when XXXXXXXX said XXXXX was the XXXXXXXXXX an officer struck XXXX in the head.

XXXXXXXXX and XXXXXX stated that the victim began to tell the officers that XXXXXXXX was the XXXXXX.

XXXXXX stated that an officer, likely Oliver, crossed the street and grabbed the victim. XXXXXX tried to pull the victim away from Oliver, and a brief tussle ensued. As Oliver pushed the victim back onto the sidewalk, another officer shot the victim, striking him somewhere below the chest. The victim fell to one knee and two officers dragged him to a patrol car and placed him on the floor in the back.

XXXXX similarly stated that when the victim began yelling at the officers, Oliver crossed the street and pushed the victim backward. Another officer, presumably Dempsey, who was standing eight to ten feet away from the victim, shot him and the victim fell to the ground.

XXXXXX stated that when the victim approached the officers and told them XXXXXX was the XXXXXXX an officer grabbed him. XXXXXX grabbed the victim at the same time. At that point, an officer walked up and shot the victim.

XXXXX stated that when an officer grabbed XXXX the victim started to cross the street and XXX pulled him back. The officer let go of XXXX approached the victim, grabbed him, and struck XXXX. The officer then pushed the victim back while another officer shot the victim.

XXXXX stated that when an officer struck XXXX the victim started across the street and was shot.

XXXXX did not witness the shooting but stated that XXXXX was being held and struck by officers when XXXX heard the gunshot behind him.

XXXXX described XXXXXX arrest and beating but did not mention XXXX attempted intervention or the shooting.

Only two civilian witnesses, XXXXX (white) and XXXXX (white) gave accounts

supporting the subjects' version of the incident. XXXX stated that XXXXX saw an officer (presumably Oliver) being attacked by two men and a woman (presumably the victim, his XXXXX, and his XXXX. XXXX stated that he thought Oliver would be killed. XXXX gave a similar statement, adding that XXXX saw the victim knock Oliver to his knees and appeared to be trying to take Oliver's gun when he was shot.

### **The subjects' deaths**

The FBI obtained death certificates for all of the subjects, save Turner. The death certificates indicated that Dempsey died on September 17, 1993; Jones died on November 9, 1994; Oliver died on July 25, 1996; and Barrett died on November 23, 2003. The FBI was not able to obtain a death certificate for Turner. However, based on searches through various databases, the FBI made an initial determination that he died in February 1978 in Acworth, Georgia. The FBI then contacted XXXXXXXX who confirmed that XXXX died in February 1978.

### **Legal Analysis**

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, none of the subjects can be prosecuted because they are deceased.

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. § 245, 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 kidnaping 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.