

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-71-1019

Date April 15, 2010

To: Chief, Criminal Section

Re: Correctional Superintendent John William Burnett,
and Correctional Officers Lucien Harris DeBow
and Clark Patterson,
Nashville City Workhouse
Nashville, Tennessee - Subjects;
Richard Lillard (deceased) - Victim
CIVIL RIGHTS

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

I. Synopsis

On July 20, 1958, Richard Lillard, a 38-year-old African-American inmate, died after being beaten in a padded cell in the Nashville City Workhouse, Nashville, Tennessee. The autopsy report showed that the victim's injuries included eight lacerations and three fractures, and the cause of death was hemorrhage, shock and cerebral concussion caused by "external

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To: Records Section
Office of Legal Administration

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

Date

Chief, Criminal Section

violence.” The three subjects, superintendent John William Burnett, and officers Lucien Harris DeBow and Clark Patterson, claimed that the victim was “deranged” and had to be subdued after the victim had obtained a blackjack and a broom handle.

The three officers were charged with murder and tried by an all white, all male jury. During the trial, XXXX, XXXXXXXX, testified that the victim did have the blackjack and broom handle, and had been acting oddly. XXXXXXXX also testified that Burnett ordered every inmate in lockdown and then entered the victim’s cell with a “long dog stick.” XXXXXXXX then saw the officers retrieve the blackjack but continue to strike the victim “like a hickory stick striking against concrete.” On January 16, 1959, the subjects were acquitted.

II. Federal Investigation

In July, 2007, the Federal Bureau of Investigation (FBI) initiated a review of the circumstances of the victim’s death, pursuant to the Department of Justice’s “Cold Case Initiative.” The FBI obtained contemporaneous newspaper articles from 1959 describing the above events as well as portions of the state trial of the subjects. After searching the relevant databases, the FBI obtained death certificates for all three subjects. Subject John Burnett died on January 9, 1972; subject Lucien DeBow died on February 4, 1986; and Clark Patterson died on December 13, 1968. No other subjects have been identified.

III. Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, the federal government cannot prosecute the subjects because they are all 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. § 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 kidnaping resulting in death, the facts of the present case do not lend themselves to prosecution under other statutes.

IV. Conclusion

Based on the foregoing, this matter lacks prosecutive merit and should be closed. AUSA Bill Cohen of the Middle District of Tennessee concurs with this recommendation.