

**U.S. DEPARTMENT OF JUSTICE
REPORT TO THE ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI**

INVESTIGATION OF THE 1964 MURDERS OF
MICHEAL SCHWERNER, JAMES CHANEY,
AND ANDREW GOODMAN



U.S. Department of Justice, Civil Rights Division
United States Attorney's Office, Southern District of Mississippi
Federal Bureau of Investigation

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I. Introduction

The Civil Rights Division of the United States Department of Justice (Division) and the Federal Bureau of Investigations (FBI), assisted by the United States Attorney's Office for the Southern District of Mississippi (USAO), have completed their investigation into the June 21, 1964 murders of Michael Schwerner, James Chaney and Andrew Goodman, three volunteers in the civil rights movement working in Neshoba and Lauderdale Counties, Mississippi. The investigation and this report are authorized by the Emmett Till Unsolved Civil Rights Crime Act, 28 United States Code § 509 (Pub.L.110-344, 122 Stat. 3934) (Emmett Till Act). This Emmett Till Act investigation focused on (1) whether sufficient admissible evidence currently exists to support further state prosecution against any surviving person for involvement in the murders; and (2) whether certain witnesses made recent federally prosecutable false statements to FBI agents. We closely coordinated with Jim Hood, the Attorney General for the State of Mississippi, because of his prosecutive authority in this case.¹

After considering all credible leads and exhausting all viable investigative tools, we have determined that no further federal investigation is warranted at this time. Additionally, we have concluded that there is insufficient evidence to support a prosecutable federal violation of any person under Title 18 United States Code § 1001, for willfully making material false statements to federal investigators. In this report, we also convey our investigative findings to the Mississippi Attorney General for his consideration of whether there is sufficient evidence to support state criminal charges.

At the outset, it should be acknowledged that nine individuals have been successfully prosecuted for these heinous crimes. In the 1967 case of *United States v. Price (Price)*, the Department's Assistant Attorney General for Civil Rights John Doar and his team of federal prosecutors convicted eight defendants – James Edward Jordan, Cecil Ray Price, Alton Wayne Roberts, Horace Doyle “H.D.” Barnette, Billy Wayne Posey, Jimmy Arledge, Jimmy Snowden,

¹ Federal charges related to the 1964 killings – even if supported by sufficient evidence – cannot be legally brought against anyone because the-then-existing statute of limitations bars the United States from prosecuting anyone for federal criminal civil rights charges related to these murders. Prior to 1994, these charges were not capital offenses and were thus subject to a five-year statute of limitations. See 18 U.S.C. § 3282(a). In 1994, some of these civil rights statutes 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). 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 or involving kidnapping across state lines with death resulting. The facts of the present case do not support the elements necessary for prosecution under any other federal statutes. Thus, the state of Mississippi is the only forum available for any prosecution related to the murders.

and Sam Holloway Bowers² – for violating the federal criminal civil rights conspiracy statute.³ In 2005, Mississippi Attorney General Hood and Neshoba County District Attorney Mark Duncan convicted Edgar Ray Killen of state manslaughter charges in *Mississippi v. Killen* (*Killen*).

Federal efforts over the past three years have been extensive and exhaustive. When we began our Emmett Till Act investigation, five of the individuals believed to have been involved were still alive: Killen (prosecuted in 2005), Richard Andrew Willis (died in July 2011), Olen Lovell Burrage (died in March 2013), James Thomas “Pete” Harris, and Jimmy Lee Townsend. Harris and Townsend are still potentially culpable for state offenses related to the murders. Department attorneys and FBI agents have (1) reviewed a massive number of relevant documents assembled over nearly fifty years (including elaborate FBI confidential source files and transcripts from two 1960s grand jury sessions); (2) examined voluminous records from the Mississippi investigation that led to the 2005 *Killen* prosecution; (3) interviewed all surviving, willing and competent, potential witnesses, often on multiple occasions; (4) sought voluntary information from subjects of the investigation; (5) evaluated and assessed several tangential allegations; (6) met with the victims’ families to seek their input; and, most significantly; (7) made extensive use of the full panoply of law enforcement investigative tools – non-prosecution agreements, covert activities, and other confidential investigative undertakings authorized by law but proscribed from public reporting, to include a federal § 1001 grand jury investigation.

With the passage of fifty years, few persons with any direct knowledge of the facts relevant to the June 21, 1964 murders remain alive. Most of the original cooperators and confidential sources are deceased. Many of these elderly witnesses have understandably imperfect recollections. Other witnesses are reluctant to provide information. Some witnesses, despite comprehensive efforts – including pursuit of evidence to support federal prosecution for false statement (see discussion in Section VII.B.2) – to evoke truthful information from them, appeared to continue to conceal crucial relevant information. These realities impacted the results of our investigation and current prospects of uncovering any further information useful for prosecutive purposes.

Additionally, we provide in this report our analysis of the currently available evidence relevant to a state murder charge to assist the Mississippi Attorney General’s prosecutive

² Attachment A lists the individuals who are referenced throughout this report and provides a brief summary of their relevance to events.

³ A total of twenty-two individuals were charged as being involved in the murder conspiracy. The above eight were convicted. Eight others – Richard Andrew Willis, Olen Lowell Burrage, James Thomas “Pete” Harris, Bernard L. Akin, Travis Maryn Barnette, Frank J. Herndon, Lawrence Andrew Rainey, and Herman Tucker – were acquitted. Mistrials were granted as to three defendants – Edgar Ray Killen, Jerry McGrew Sharpe, and Ethal Glenn “Hop” Barnette. Finally, Otha Neal Burkes, Jimmy Lee Townsend and Oliver Richard Warner were charged in preliminary charging documents, but they were not included in the final indictment and were not trial defendants.

decision. We make no recommendation as to whether there is a prosecutable state murder charge. Such decision is properly the exclusive province of state prosecuting authorities.

This report summarizes the information learned during this investigation, as well as relevant information from prior investigative and prosecutive work conducted by both federal and Mississippi authorities during the intervening fifty years since the murders. We trust that our work will allow for state authorities to make a fully informed decision. And, under the mandate of the Emmett Till Act, the Department and the FBI would continue to assist the state if it decides that the evidence is sufficient to support a state murder or other criminal prosecution.

II. Factual Summary: 1964 Murders

The following summary of facts is provided to assist in understanding the remainder of the report. It relies heavily, but not exclusively, upon the public records of the *Price* and *Killen* trials, particularly the detailed confessions of convicted defendants Jordan and H.D. Barnette, and Jordan's subsequent testimony in *Price*. It should be noted that certain information related in this summary and elsewhere in this report, while instructive and illuminating, would be inadmissible in a future criminal trial, such as when a witness is deceased or is a protected confidential source,⁴ and therefore unavailable to testify. Additionally, where necessary in this report, certain facts are presented in a manner so as not to reveal the identity of a protected confidential source.

In the summer of 1964, promoted as "The Freedom Summer," the Congress of Federated Organizations (COFO), one of the most active civil rights groups in Mississippi, planned a concentrated effort to register African Americans to vote. Michael Schwerner, a twenty-four-year-old former New York social worker, was an established civil rights organizer with COFO working in and around Meridian and Philadelphia. In 1964, Schwerner teamed up with James Chaney, a twenty-one-year-old African-American COFO volunteer from Meridian. Together with Schwerner's wife, Rita, they established a community center and organizing headquarters in Meridian.

A Mississippi white supremacist organization, the White Knights of the Ku Klux Klan (Klan), was fiercely opposed to all forms of desegregation, especially voter registration efforts. The Klan adopted violence to achieve its ends.

Schwerner was particularly reviled by the Klan for his work. Indeed, the killing of Schwerner was a routine topic discussed at Klan meetings attended by both Meridian and Philadelphia Klansmen, but Klan orthodoxy prevented such action unless authorized by the state Klan leader. Several weeks before the murders, state Klan leader Sam Bowers gave that authorization.

⁴ While the identity of certain FBI protected confidential sources cannot publicly be released to protect against possible harm to these elderly individuals, the information that each witness provided to a past or to the current investigation has been shared with the Mississippi Attorney General for his assessment of its prosecutive value.

On the evening of June 16, 1964, a large group of Meridian and Philadelphia Klansmen, including Klansmen later involved in the June 21 murders, attended a Klan meeting.⁵ The Klansmen discussed a reported gathering, thought to include civil rights workers, at the African-American Mount Zion Methodist Church in Neshoba County just outside of Philadelphia. Schwerner and Chaney had visited that church and worked with its parishioners. Several armed Klansmen left the Klan meeting and drove to the church looking for white civil rights workers. Although no civil rights volunteers were present at the church, the Klansmen beat the African-American parishioners whom they encountered and returned later to burn down the church. Afterwards, it was speculated by some Klansmen that the attack on the church might lure Schwerner back to Neshoba County.

Schwerner and Chaney were in a COFO training program in Ohio when they learned about the assaults and arson. Andrew Goodman, a twenty-year-old college student and new volunteer from New York, joined Schwerner and Chaney in leaving Ohio for Mississippi. They arrived in Meridian by June 20, 1964.

On Sunday morning, June 21, 1964, the three civil rights volunteers left Meridian to visit with the victims of the Klan church attack near Philadelphia. They drove a 1963 Ford station wagon with Mississippi tags registered to COFO. The men spent the early afternoon in Longdale, an African-American community outside of Philadelphia where the church's parishioners lived. They spoke with various victims of the Klan attack and other members of the community.

At about 3 p.m., Neshoba County Deputy and Klan member Cecil Ray Price, who shared the Klan's antipathy for COFO, pulled the three men over during their return to Meridian through Philadelphia. Deputy Price recognized Schwerner and identified the station wagon as belonging to COFO. He arrested the three men and took them to the Philadelphia jail. He booked Chaney for speeding and held Schwerner and Goodman for investigation, ostensibly in connection with the church arson. Price contacted Edgar Ray Killen, a Philadelphia minister and Klan leader, and advised him that Schwerner and the two other civil rights volunteers were in custody.

Killen saw an opportunity to punish the COFO workers. Joined by two other men, he set out to Meridian to meet with Meridian Klan members.⁶ Killen sought help from Meridian

⁵ Meridian, Mississippi, and Philadelphia, Mississippi are approximately forty miles apart. In 1964, Meridian was a thriving, mid-sized municipality, and Philadelphia was a much smaller, rural town. Klansmen from the two communities often attended the same Klan meetings and had previously acted in concert. Thus, some members of the Meridian Klan chapter knew members of the Philadelphia Klan chapter, but others from the two groups were not acquainted.

⁶ A now-deceased cooperating government witness, James Jordan, identified the two accomplices by name as Jimmy Lee Townsend and Jerry McGrew Sharpe, both from Philadelphia. The information related to Townsend (still living) and Sharpe (deceased) is discussed in more detail later in the report.

because the Klan preferred to use non-local Klansmen to conduct acts of violence, minimizing the chance that a participant would be recognized by a victim or a witness.

Killen and his Philadelphia accomplices arrived at Meridian's Longhorn Restaurant, a Klan gathering place, at about 6 p.m. Killen delivered the news to the Meridian Klan that Deputy Price was holding the arrestees in jail but could not detain them for long. Killen appealed for Meridian Klansmen to come to Philadelphia to abduct and assault the arrestees when they were released from jail. Killen announced that the civil rights workers "needed their asses tore up," and instructed the Klansmen to get gloves and to bring guns to Philadelphia.

To assist Killen, Meridian Klan leaders, including James Thomas "Pete" Harris, made calls to recruit other Meridian Klansmen. As their numbers grew, the Klansmen relocated from The Longhorn to the Akin's Mobile Homes property, a Meridian business owned by a now deceased Klan leader. Eventually, five recruited Meridian Klansmen – James Jordan, H.D. Barnette, Travis Maryn Barnette,⁷ Jimmy Arledge, and Jimmy Snowden – armed with handguns and equipped with gloves, drove to Philadelphia in one car. The three Philadelphia Klansmen, joined by Meridian Klansman Alton Wayne Roberts, drove separately to Philadelphia. They reunited in downtown Philadelphia. Harris and the other Meridian Klan leaders remained in Meridian and did not travel with the group to Philadelphia. Significant to our later investigation, no evidence suggests that Harris went along with the other Klansmen to Philadelphia or ever joined their group later that night.

Arriving in downtown Philadelphia after dark, the recruited Meridian Klansmen reconnected with Killen and the Philadelphia Klansmen, and they were joined by Philadelphia Klansman Billy Wayne Posey. The Meridian Klan contingent parked on a street near the jail and the Philadelphia group assembled nearby waiting for notification that the civil rights workers had been released from jail. Killen left the group, asking to be driven to a funeral home in Philadelphia to establish his alibi.

At about 10:30 p.m., Deputy Price told Chaney to pay a \$20 fine and released the three men from the jail. He told them to "see how quickly they could get out of Neshoba County," and escorted them to their station wagon impounded near the jail. The young men immediately drove from Philadelphia south on Highway 19 toward Meridian, the direct route home. The waiting Klansmen were alerted when the three civil rights workers were released. They immediately drove off in two separate cars following the victims' station wagon. Posey drove the Philadelphia Klansmen in his 1958 Chevrolet, and H.D. Barnette drove the Meridian Klansmen in his Ford.

Price, driving his official patrol car, joined the two carloads of Klansmen at the outskirts of Philadelphia, and they all sped after the victims' station wagon. After a high-speed chase, Price caught up to the victims when they turned onto a roadway from Highway 19, in an apparent attempt to elude their pursuers. Pulled over by Price, the three civil rights workers were forced into his patrol car. The Klan convoy, with a Klansman now driving the victims' station

⁷ As discussed in the summary of the *Price* trial at Section IV.E., the testimony was conflicting as to whether Travis Barnette was present at the killings.

wagon, reversed direction on Route 19 and drove to an isolated location just off the highway on Rock Cut Road about ten miles south of Philadelphia.

Significantly, before the Klansmen overtook and abducted the victims, Posey's Chevrolet had mechanical troubles. Ultimately one man was left alone with Posey's disabled car while the other Klansmen completed the murder plot.⁸

The three victims were quickly shot and killed alongside Rock Cut Road and their bodies were loaded into their own station wagon. At least seven of the eight defendants convicted in *Price* (all now deceased) - Price, and Klansmen Roberts, H.D. Barnette, Arledge, Snowden, Jordan, and Posey - were at the murder scene.⁹ After loading the three bodies into the station wagon, Price returned to Philadelphia on Highway 19, while the rest of the group headed away from the highway on Rock Cut Road.

Posey immediately instructed the remaining Klansmen to follow him. Posey drove the victim's station wagon with the bodies in it, leading the other Klansmen in Barnette's Ford along back roads to the Old Jolly Farm. The farm was a property outside of Philadelphia owned by Olen Lovell Burrage. The three bodies were buried by a bulldozer at Burrage's Old Jolly Farm in an earthen dam then under construction at the farm. Burrage was seen in a car with two other never-identified men near the dam site shortly before the bodies were buried. He was later seen at Burrage's "truck garage," a trucking business office and warehouse that were across the street from Burrage's home. Burrage supplied gasoline from his gas pump for use to incinerate the victims' station wagon later that night and Burrage also offered the use of one of his trucks for the mission.

The Klansmen left the Burrage property between about 1:00 a.m. to 1:30 a.m. on June 22, 1964. Someone drove the civil rights workers' station wagon to a location on Highway 21 near Philadelphia and set it ablaze in a swampy area alongside the highway. The rest of the group returned to Philadelphia. Then, the Meridian Klansmen returned to Meridian.

III. Initial Federal Investigation: 1964

A. Initiation of Federal Investigation

Department of Justice attorneys were active during the summer of 1964 investigating and litigating voter registration cases throughout rural Mississippi and were thus working closely with COFO organizers. When the three COFO volunteers failed to return as scheduled from

⁸ This individual was specifically identified by Jordan, the government's cooperating witness in the *Price* trial, as Townsend, a then 17-year-old who worked at Posey's gas station outside of Philadelphia (see discussion about testimony in *Price* trial in Section IV).

⁹ There are conflicting accounts as to whether Travis Barnette and/or Sharpe (both now deceased) were also present. In the 1967 federal trial, Travis Barnette was acquitted and Sharpe was granted a mistrial.

their June 21 visit to Neshoba County to investigate the Mount Zion Church arson, a COFO representative called a Department attorney to report that the men were missing. Local law enforcement officials in Lauderdale and Neshoba Counties had advised COFO that no persons of the victims' description were being held. The Department attorney alerted the FBI, which promptly sent a Meridian-based Special Agent to Philadelphia and opened a federal investigation into the victims' disappearance.

Price was confronted by the FBI on June 22, 1964. He admitted that the previous day he had arrested and jailed the three victims. Price maintained, however, that after releasing the men that evening, he last saw them driving from downtown Philadelphia toward Meridian. Price became a prime suspect after a review of records and the interviews of local law enforcement personnel and administrative staff could not account for Price's whereabouts between 10:40 p.m. and 11:30 p.m. on June 21. Additionally, six days after the disappearance, a Knoxville reporter recorded an interview with a local Philadelphia man who claimed that Sherriff Rainey and others were bragging that the Klan had killed the young men and that Deputy Price had been involved. This significant information was conveyed to the Goodman family attorney and the FBI.

The charred station wagon registered to COFO and driven by the victims was recovered in the swamp on June 23, 1964. The discovery of the torched station wagon two days later suggested the victims were deceased rather than missing, and the investigative activity increased accordingly. Quickly, the FBI moved massive FBI resources into Mississippi. It established a new Jackson Field Office which coordinated a vast manhunt and investigation termed the "MIBURN" (Mississippi Burning) investigation.

The federal investigation faced daunting challenges. At best, persons with relevant information were reluctant to cooperate. Many potential witnesses, including law enforcement officers, were deceitful and obstructionist. False leads were deliberately planted, requiring unnecessary investigative attention. Federal authorities were required to conduct the investigation independent of local and state law enforcement.

The FBI conducted approximately 1000 interviews during the summer and fall of 1964. The record demonstrates an enormous federal effort to locate the missing men and to identify those responsible for their disappearance. Most importantly, the FBI developed a relatively complex internal security-type intelligence operation, utilizing local confidential sources and cooperators. This effort depended upon infiltration, surveillance, and deception of the Klan. Initially, only hearsay information was provided by already trusted state law enforcement officers or local civil rights advocates. In time, rumors led to sources with personal knowledge of what had occurred and who was involved. FBI special agents gained the trust and assistance of often begrudgingly cooperative Klansmen and local law enforcement officers (some of whom were also Klansmen) to act as confidential sources. The FBI also skillfully instilled distrust among the Meridian/Philadelphia Klansmen.

Meanwhile, local law enforcement officials ostensibly conducted a parallel investigation. Local spokespersons brazenly speculated that the three COFO volunteers had purposely disappeared in order to attract attention to their cause. A local Coroner's Jury was initiated. Eventually, the local county prosecutor unsuccessfully subpoenaed FBI agents to a Neshoba

County grand jury and expressed an intention to prosecute only those persons who were cooperating with federal authorities, but never initiated any such prosecutions. More important, no state or local criminal charges were brought in the 1960s for the murders of the three civil rights workers.

B. Discovery of Bodies

Initially, the federal investigative effort concentrated on a search for the bodies of the victims. Enlisting the assistance of a large number of Navy personnel from the Meridian Naval Air Station, FBI agents first focused on the swampy area surrounding the charred station wagon. The FBI conducted other searches for the bodies in other Neshoba County locations throughout the summer without success, until, in late July 1964, an informant provided accurate information about the location of the bodies. That informant, who to this day remains anonymous, related that he knew from personal knowledge that the bodies had been buried in a dam on the Neshoba County farm owned by Olen Burrage and that the bodies were still buried there.¹⁰ Based on that disclosure, the FBI obtained a federal search warrant on August 3, 1964, to search the Old Jolly Farm outside of Philadelphia.

Burrage, a native of Neshoba County, was well known in his community. He owned several properties in Neshoba County, including the over 250 acre Old Jolly Farm, located about two miles from his home. Burrage operated an interstate trucking business, located across the street from his home, which had over a dozen vehicles and employed a number of local men as drivers.

The next day on August 4, 1964, the FBI executed the search warrant. When the FBI arrived on August 4, Burrage was compliant, insisting that he wished to cooperate fully. Later that day, after several hours of excavation with heavy equipment and digging by hand at the newly completed dam, FBI agents discovered the three bodies. When told of this discovery, Burrage claimed to have no knowledge of how they came to be buried on his land.

The FBI learned that Burrage had contracted in May 1964 to build the dam on the Old Jolly Farm. He had hired several local men with bulldozers to construct an earthen dam structure to form a pond. Two of the bulldozer operators, including now-deceased *Price* defendant Herman Tucker, maintained that they worked to build the dam until late afternoon on June 21, the day the civil rights workers disappeared.¹¹ They claimed that they observed nothing unusual when returning to the job site the next Monday morning and that they had no further relevant information. Neighbors who lived near the Old Jolly Farm also denied seeing or hearing anything unusual the evening of June 21.

¹⁰ There is no written record of the identity of this source. The only FBI agent who knew the source's identity is now deceased.

¹¹ One now-deceased witness identified the bulldozer operator who buried the bodies as "Herman," and Herman Tucker, a deceased acquitted defendant in *Price*, was a bulldozer operator who was working on Burrage's dam.

C. Further Confidential Source Information

The FBI's discovery of the bodies sent a clear message to the Klansmen involved in the murder and to their supporters that someone with direct knowledge of the events had revealed information to law enforcement. A few days after the bodies were discovered, H.D. Barnette, abruptly moved his family back to his home state of Louisiana. Meanwhile, the FBI continued its infiltration activities.

Sources identified other Meridian and Philadelphia Klansmen, the Klan leaders, the locations of Klan meetings, and what had been discussed at those meetings. The FBI learned of pre-existing plans to conduct surveillance on Schwerner and other COFO workers, discussions about killing Schwerner, and additional facts about the events of June 21. The FBI also conducted 24-hour surveillance of certain Klansmen.

Klan confidential source information accelerated in volume and improved in quality. One early important FBI source, for example, Sergeant Carlton Wallace Miller (deceased), a Meridian police officer who later testified in *Price*, was first paid by the FBI beginning in September 1964. He continued his relationship with the Klan while supplying information to the FBI. Miller advised the FBI that he had helped establish the Meridian Klan group and related important hearsay and lead information. This source and other sources proffered the names of Meridian and Philadelphia Klansmen likely involved in the murders. Miller and a number of confidential sources received significant financial incentives and additional necessary financial support commiserate with their cooperation.

In mid-October, James Jordan was interviewed by the FBI. At that time, he denied having any relevant information or being a member of the Klan. Jordan admitted knowing the specific Klansmen about whom he was questioned, but he claimed not to know whether the men were in the Klan. Meanwhile, other confidential sources advised that the Meridian Klan had begun to suspect that Jordan was cooperating with the FBI and that he was furnishing the information that was actually being provided by other sources. Later in October, Jordan disappeared from Meridian and FBI sources advised that suspicious, angry Klansmen were looking for him. H.D. Barnette was still out of the state.

D. Jordan and Barnette

The FBI located Jordan in Gulfport, Mississippi, and H.D. Barnette in Louisiana. With limited options and resources, Jordan and H.D. Barnette elected to work with the federal authorities and, after successive interviews, provided detailed confessions discussed in depth in Section IV.

When first approached by the FBI in Gulfport in late October, Jordan continued to deny that he was a Klansman, but, contrary to his previous interviews, he did offer the names of others who were in the Klan and suggested that those Klansmen might provide information to the FBI regarding Klan activities and the murders. Later, Jordan claimed that he had heard about the details of the murders but he continued to deny any personal involvement. Finally, on November 5, 1964, Jordan signed a lengthy statement detailing his personal account of the murders and the

burial of the civil rights workers. In subsequent interviews, Jordan furnished the FBI and Department prosecutors with more detail and clarification.

Days after Jordan's November 5 disclosure, an important detail of his account was corroborated by two highway patrolmen (both now deceased), providing greater confidence in Jordan's overall account.¹² When the FBI next approached H.D. Barnette in Louisiana, they were equipped with detailed information about the murders, and H.D. Barnette almost certainly realized that someone had already implicated him. H.D. Barnette subsequently signed his own detailed confession on November 20, 1964. Like Jordan, in subsequent interviews, H.D. Barnette expanded upon his signed confession, and clarified some of the details. Jordan later pled guilty to federal charges and testified for the government, but H.D. Barnette stood trial in *Price*, despite his confession.

The confessions of Jordan and H.D. Barnette generally corroborated each other's account of the events of June 21, 1964, and the events that led to the murders. Most specifically, both Klansmen agreed on the details related to seven defendants who were ultimately convicted in *Price* for pursuing, abducting and killing the victims. Both men also related consistent information about Killen's involvement in the planning of the murders. Both provided inculpatory information related to Harris and Burrage. Jordan also specifically identified Townsend as being present until he was left behind with Posey's disabled car, which was consistent with H.D. Barnette's recollection of "someone else from Philadelphia" being present and then left with Posey's vehicle.

Jordan additionally provided inculpatory information against state Klan leader Sam Bowers, the eighth defendant adjudged guilty in *Price*, who authorized the killings, but was not present at the murders.

But, it should be noted that there were several significant differences in the accounts provided by Jordan and H.D. Barnette. Most significantly, Jordan claimed to be acting as a lookout at the time of the shootings, but H.D. Barnette stated that Jordan was the person who shot Chaney. Further, although Jordan identified Townsend by his full name, Sharpe by his last name, and Tucker by his first name; H.D. Barnette, who was from Meridian, did not identify any of these three Philadelphia men by name.

¹² These two officers confirmed that they had encountered Posey and Deputy Price in their vehicles on Highway 19 just outside of Philadelphia shortly after the civil rights workers had been released. During previous interviews, the highway patrolmen admitted only that they helped Deputy Price transport the three men from the site of their arrest to the jail. After Jordan reported their night-time encounter with Price and Posey on Highway 19 just before the chase of the victims began, the FBI used that information to persuade the officers to admit this significant fact (see *Price* trial summary in Section IV).

E. Charging the 1967 Federal Prosecution

In December 1964, federal criminal civil rights charges were filed in a criminal complaint in the Southern District of Mississippi and the charged defendants were arrested. Thereafter, eighteen defendants were indicted by a federal grand jury in the Southern District of Mississippi on January 15, 1965, for violating Title 18 United States Code §§ 241 (Conspiracy Against Rights) and 242 (Deprivation of Rights Under Color of Law). The applicable federal criminal statutes were the two criminal civil rights statutes of the time. In 1964, a § 241 conspiracy had a ten-year maximum sentence while a § 242 violation was a misdemeanor.

The United States District Court ruled on several critical pre-trial motions in February 1965. Favorably to the government, the Court ruled that the August 3, 1964 search warrant was valid under the Fourth Amendment, refusing to exclude evidence derived from the search of the Old Jolly Farm. The defendants' motion for separate trials was denied. But, another ruling substantially delayed the federal prosecution. The court granted the defense motion to dismiss the § 241 conspiracy and the substantive § 242 misdemeanor counts in the 1965 indictment against all defendants except Neshoba County Deputy Price and the other law enforcement defendants. The dismissal caused an over two-year delay while the Department appealed.

Ultimately, the United States Supreme Court upheld the entire 1965 indictment in *United States v. Price*, 383 U.S. 786 (1966). The Supreme Court held that all of the non-law enforcement defendants, the civilian Klansmen, could be prosecuted for violating §§ 241 and 242, if they conspired with and aided and abetted law enforcement officers who were acting under the color of law to deprive a person of life and liberty without due process of law, a right protected by the Fourteenth Amendment.

In February 1967, nineteen defendants were indicted on a single § 241 conspiracy charge in a superseding indictment by another federal grand jury in the Southern District of Mississippi. The number of indicted defendants changed to nineteen because one of the 1965 indicted defendants (Jimmy Lee Townsend, the then seventeen-year-old defendant left behind with Posey's disabled car) was removed from the 1967 indictment (see discussion regarding Townsend in Section VII.C.2.a), and two other defendants, state Klan leader Sam Bowers and former Neshoba County Sherriff Ethal Glenn "Hop" Barnette (to be distinguished from H.D. Barnette), were added. Under this superseding 1967 indictment, the Department proceeded to trial in *United States v. Price*.

IV. United States v. Price Evidence Summary

A. Overview

The trial of *United States v. Price* was held in Meridian in the Southern District of Mississippi, commencing on October 9, 1967. One hundred and fifty-one witnesses testified. Approximately twenty percent of the witnesses presented the government's evidence of the crime, while the remaining eighty percent of the witnesses offered character and alibi evidence for the defendants. The jury returned its verdicts on October 20, 1967.

The 1967 federal prosecution trial team focused its evidentiary presentation on those defendants who participated in the shooting deaths of the three victims and on the top Klan leadership, Mississippi Klan leader Bowers and Philadelphia Klan leader Killen. All of the primary targeted defendants were convicted except for Killen. Accordingly, the prosecution team concentrated less on the secondary defendants, who had helped arrange, facilitate, and organize the murders and the burials, but had not actually participated in the killing. Given the available evidence and the political climate surrounding the trial, this strategy can hardly be faulted and proved largely successful.

A mix of witnesses – civilians, local law enforcement officers and officials, FBI agents, and forensic experts – portrayed the victims and their activities for the jury, described the recovery of their vehicle and bodies, and identified the bodies. Also among this first group of government witnesses were civilians, highway patrol officers, and jail personnel who established that Deputy Price arrested the three civil rights workers on the afternoon of June 21, 1964, detained them in the Philadelphia jail, and released them that evening. African-American colleagues and the victims' family members established that Schwerner and Chaney were in Mississippi working with the African-American community on voter registration efforts and were planning on using the Mt. Zion Methodist Church as a Freedom School. After the church burned, the civil rights workers returned to investigate the burning, speaking with African-American victims. Highway Patrol and Neshoba County jail personnel witnesses recalled the arrest, detention in the Philadelphia jail, and the release of the three civil rights workers on June 21, 1964. Highway Patrolman Earl Robert Poe (deceased) testified that, sometime after 10 p.m. on Highway 19 just south of Philadelphia, Posey approached his patrol car and asked where Price was.

As set forth further below, cooperating Klansmen Carlton Wallace Miller and Delmar Dennis thereafter testified about the defendants' Klan affiliations and their targeting of Michael Schwerner. James Jordan, who pled guilty and cooperated as a government witness, testified from personal knowledge regarding the events of June 21 after the three victims were released from the jail. He also testified to state Klan leader Bowers' approval of the murder. Another witness, Joseph Michael Hatcher, provided testimony that repeated some of what Miller and Dennis provided to the jury and related a key admission by Killen. The government's case ended with H.D. Barnette's confession, which was necessarily redacted to eliminate statements implicating other defendants in order to comply with the Sixth Amendment's right to confront witnesses.

As previously noted, seven defendants – Price, Roberts, H.D. Barnette, Posey, Arledge, Snowden, and Bowers – were convicted of the federal criminal civil rights conspiracy. Eight defendants – Burrage and Harris, as well as Bernard Akin, Travis Barnette, Herndon, Rainey, Tucker, and Willis – were found not guilty. Mistrials were entered by the court after the jury could not agree as to three defendants, Killen, Sharpe and "Hop" Barnette.

B. Carlton Wallace Miller (deceased)

Miller, now deceased, testified that he was a police officer in Meridian in 1964, and also a member of the Klan, sworn in by Killen, whom he had known most of his life. He testified that

he personally saw other defendants attending Klan meetings prior to June 21, 1964, including Harris, Akin and Herndon (Meridian Klan Chapter leaders), Killen and Bowers, and Roberts, Arledge, Snowden, and H.D. Barnette (all present at the killing) and H.D. Barnette's brother Travis. Miller also testified that he was present at the meeting when Harris was sworn into the Klan in April 1964.

Miller further testified that he attended a joint Philadelphia/Meridian Klan meeting at which the "elimination" of Schwerner was discussed, explaining that "elimination" was a Klan term for murder, and that all eliminations needed to be approved by the state Klan leader. According to Miller, Killen and Herndon, who ran the particular meeting where elimination was discussed, represented to the group that Bowers, who was the state leader of the Klan in Mississippi, had approved the elimination of Schwerner.

Miller testified that he had just returned to Meridian on June 21 from National Guard duty and thus learned nothing about the murders on the day they were committed. However, after the murders, Miller had separate discussions with Killen, Herndon, and Akin, all of whom divulged certain aspects of the murders to him.

According to Miller's testimony, Killen provided the most information about the events of June 21, explaining that the civil rights workers were chased in their car down Highway 19, then shot and buried in a dam about 15 feet deep. According to Miller, Killen advised that the Klan burned a church to lure Schwerner to Philadelphia. Killen also told Miller of his own involvement on the night of June 21, 1964, saying that when he received the news that the civil rights workers were arrested in Philadelphia, he traveled to The Longhorn Drive-in restaurant in Meridian to meet Herndon. Together Killen and Herndon organized a group of Klansmen at the Longhorn to travel to Philadelphia.

Miller testified that Herndon told him a similar story about organizing Klansmen with Killen at the Longhorn, and that Akin provided a comparable report about the Klan burning the church to lure Schwerner to Philadelphia. Miller also told the jury that on the day the FBI recovered the station wagon, Herndon said to Miller that "someone goofed up, that they were supposed to carry the car to Birmingham."

During the cross-examination of Miller regarding his motives, the defense raised the question of whether Miller provided information in order to obtain reward money. Miller denied receiving reward money, but admitted that the FBI paid him \$2,400 to remain as an informant in the Klan and to report what he witnessed. Miller was also cross-examined on the reliability of his memory.

C. Delmar Dennis (deceased)

Another former Klansman, Delmar Dennis, also now deceased, corroborated much of Miller's testimony. Dennis testified that he was sworn into the Klan in March 1964 by Killen at the Cash Salvage store in Meridian, and that Harris, Roberts, and Herndon were present along with Killen. Killen told Dennis at his swearing-in that the Klan "was an organization of action,"

and that “elimination” meant killing. Dennis testified about Klan meetings, secret codes, and Klan doctrine.

Dennis further testified that he attended three separate meetings in which the Klan discussed the elimination of Schwerner. The first meeting was at Cash Salvage and the same defendants present at Dennis’s swearing-in were again present, along with Akin. Dennis testified that Killen said that the elimination of Schwerner had been approved.

The second meeting took place in early May 1964, in Herndon’s trailer home. There, Klan members discussed the fact that the elimination of Schwerner had been approved, but nothing had been yet done about it. Dennis told the jury that Harris was present at this meeting.

The third Klan meeting took place at a gymnasium in Neshoba County. During that meeting, it was announced that there was activity at the Mount Zion Church and that civil rights volunteers might be there. Klan members left their meeting, assaulted the African-American parishioners at the church, and returned to report their actions. According to Dennis, Harris was also present at this Neshoba County Klan meeting.

Dennis was cross-examined regarding the money that he received from the government. He admitted that he received \$15,000 for his work as a confidential informant.

D. Joseph Michael Hatcher

A second Meridian police officer, also a Klansman, Joseph Michael Hatcher, testified and corroborated some of the testimony of Miller, Dennis and Jordan. Hatcher testified that he had attended Klan meetings, including a meeting led by Killen and a meeting where it was discussed that civil rights workers “needed to be done away with.”

Most significantly, Hatcher testified that on the afternoon after the murders, Killen spoke alone with Hatcher. Killen told Hatcher that “the three had been taken care of,” the bodies were buried in an earthen dam, the car had been burned, and that Killen had established an alibi at a funeral home.

E. James Jordan (deceased)

James Jordan was perhaps the most critical government witness because he provided a narrative of what happened on June 21, 1964, from personal knowledge. He testified that he was an early member of the Meridian Klan, and was brought into the Klan by Miller. On June 21, he went to The Longhorn Drive-In and Harris and Herndon were present at the Longhorn when he arrived.

Jordan testified that Killen arrived at The Longhorn from Philadelphia. According to Jordan, a Philadelphia Klansman, whom he knew only by his last name, Sharpe (acquitted

defendant Jerry McGrew Sharpe), drove Killen to The Longhorn and another “young man” from Philadelphia, Jimmy Lee Townsend, accompanied the other two Klansmen.¹³

Jordan told the jury that Killen spoke with Herndon upon arrival at the Longhorn. After speaking with Herndon, “he” (it is unclear from the testimony whether “he” is Herndon or Killen) solicited “some help on over in Neshoba County” and “some men to go with him” because “two or three of those civil rights workers were locked up and they needed their rear ends tore up.” Jordan also testified that one of the civil rights workers was Schwerner.

When asked what action the men took in response to Killen’s request for assistance, Jordan responded, “we started calling them on the telephone trying to line up some more men to go with us.” Notably, Jordan identified Harris as one of the men making those telephone calls to recruit other Meridian Klansmen and that Harris had a particular Klan job as “an Investigator.”

As the group grew in numbers, Jordan testified that it moved from The Longhorn to Akin’s Mobile Homes, Bernard Akin’s business. During the move between Klan locations, Jordan rode with Killen and Sharpe in either Harris’ car or in the Philadelphia Klansmen’s car. Jordan added at this point that Harris was known to him by the nickname “Pete.”

Jordan testified that once the group assembled at Akin’s Mobile Homes, Killen said that they would need six or seven men. Killen sent Jordan to pick up Roberts and to buy rubber gloves. Killen told Jordan to find gloves at Warner’s grocery store.¹⁴ Jordan testified that Harris was present at Akin’s Mobile Homes, but he did not relate what Harris did, said or might have witnessed while there. Jordan testified that Killen said “we” had to hurry to get the three civil rights workers who were “locked up” and “pick them up” at “the outskirts of town” [Philadelphia] and “tear their butts up.” Jordan testified that, when the group left Meridian for Philadelphia, Harris did not join them.¹⁵

Later in his testimony, Jordan told of an earlier important conversation between Harris and state Klan leader Bowers. Jordan testified that in May 1964, he went with Harris to meet with Bowers at a restaurant outside of Laurel, Mississippi (Bowers’ hometown). At that meeting, Bowers said to Jordan and Harris that Schwerner “was a thorn in the side of everyone living, especially the white people and that he should be taken care of.” Jordan testified that a third man, “Akin’s son,” was present at the Laurel meeting.¹⁶ Jordan also told the jury that he

¹³ Although Townsend was not a defendant in the 1967 *Price* trial, defense attorneys cross-examined Jordan about Townsend by name in an effort to suggest to the jury that Jordan had mistaken Sharpe for Townsend.

¹⁴ Oliver Richard Warner (deceased), another Meridian Klansman, was charged in preliminary charging documents, but was not charged in the final Indictment and was not a defendant at trial.

¹⁵ In an FBI interview, but not at trial, Jordan explained that Harris told the group that because of his status as an “Investigator” for the Klan, he was not allowed to go on jobs of any kind.

¹⁶ Bernard Akin’s son, Earl, worked with him at Akin’s Mobile Homes. Earl Akin was charged in 1964 in a federal criminal complaint for suborning perjury related to this case. That charge

and Harris met again with Bowers about a month after the murders. At that subsequent meeting, Bowers told Jordan and Harris that “the best thing to do was not to talk about it, that everything was well done, it was a job to be proud of, if there were any instruments involved they were to be gotten rid of.”

Jordan’s testimony was most explicit about what occurred after leaving Meridian on the evening of June 21, 1964. He testified that Killen left first, along with defendants Roberts and Sharpe, because “he had to get on back there fast as he could and to make the arrangements.” Thereafter, Jordan traveled to Philadelphia, with Meridian Klansmen Arledge, Snowden, H.D. Barnette and his brother Travis. They met Killen in Philadelphia where Killen showed them the jail and instructed them where to wait until the civil rights workers were released. At this time, Jordan testified that another Barnette brother, known to him as “Hop” [former Neshoba County Sheriff Ethal “Hop” Glenn Barnette (Hop)], met them, told them someone else would come to instruct them, and left.¹⁷

Jordan testified that Killen was taken to a Philadelphia funeral home to establish an alibi. Thereafter, a police car approached the Meridian Klan car and a Philadelphia city policeman reported that the three civil rights workers had been released from jail and were driving on Highway 19. Jordan failed at trial to name or identify acquitted defendant Richard Andrew Willis whom he had previously identified to the FBI as the policeman.

Jordan testified that Posey, Roberts, Sharpe, and another Philadelphia man were all in a second car (Posey’s Chevrolet). The two cars were joined by defendant Price in his patrol car when those three cars left Philadelphia on Highway 19. According to Jordan, as the cars drove to catch up to the victims, Posey’s car broke down. Jordan testified that Roberts and Posey, and then Sharpe, abandoned Posey’s car and rejoined the group. Of significance to our later investigation, Jordan testified during cross-examination that the “other young man” from Philadelphia – who not only went to Meridian with Killen and Sharpe, but also was later left behind on the highway to repair Posey’s disabled car – was named Townsend.¹⁸

Jordan testified that when Deputy Price caught up to and stopped the three civil rights workers after they turned off Highway 19, he ordered them out of their station wagon and into

was dismissed and Earl Akin was not indicted in 1967 nor prosecuted for any charge related to the murders (see further discussion of Earl Akin later in Section VII.C.2.b).

¹⁷ Jordan further testified that Hop Barnette recruited and led men from the June 16 Klan meeting to go to the Mt. Zion church. An African-American church member corroborated Jordan with testimony that Hop Barnette was one of the Klansmen present during the beating at the church.

¹⁸ In an effort to convince the jury that Jordan had mistaken Sharpe for Townsend, the defense elicited conflicting testimony from Jordan in *Price* about Townsend. Ultimately during cross-examination, however, Jordan somewhat confusingly affirmed that Townsend did go to Meridian and was later left on the highway to repair Posey’s car.

his patrol car. Posey then got into the driver's seat of the station wagon and followed Price as they drove back toward Philadelphia.

The cars then turned onto a gravel road (Rock Cut Road) off Highway 19. Jordan testified that he got out of the car to be a lookout before it drove up the gravel road. According to Jordan, he heard the sound of car doors slamming, loud talking, and then gunshots. Jordan then testified he walked up the road toward the noise and saw the victims lying beside the gravel road. Jordan testified that the bodies were loaded into the victims' station wagon and Posey then stated, "Just follow me; I know where we're going." Jordan testified that Price, Posey, Roberts, Arledge, Snowden, H.D. and Travis Barnette, and Sharpe were all present at the shooting.

Jordan testified that, following Posey, the cars then drove to a dam site, where they "opened the back of the station wagon, took the boys out, and took them down in this hollow" where there were two bulldozers. Posey sent Jordan back up the road to listen for the bulldozer operator, who was not there yet. Snowden told Jordan that he had seen a man who must be the operator and then they heard the bulldozer "crank up." Jordan heard the machine working for about twenty minutes. Jordan added that Posey told them that the bulldozer operator would take care of the station wagon, claiming that "Herman" (acquitted defendant Herman Tucker) would take the victims' car to Alabama and burn it.

Jordan testified that he next went to a "warehouse and office building and gas pump." There, Jordan saw a man that he had never seen before, whose photograph he had thereafter viewed. Asked to identify the man, Jordan pointed to "a gentleman sitting next to Mr. Price" in the courtroom. Presumably, Jordan pointed to Burrage, rather than to another defendant. Otherwise, one would expect Burrage's counsel to have informed the jury about a misidentification. However, the record does not reflect to whom Jordan pointed.¹⁹

Jordan was vigorously cross-examined regarding the accuracy of his account and confronted with his prior inconsistent statements about various issues in addition to a possible confusion of Sharpe for Townsend. He was impeached by a prior inconsistent statement in which Jordan did not indicate that Travis Barnette went to Philadelphia with the other defendants.²⁰ He was further impeached by a prior inconsistent statement in which he named an officer other than Willis as the Philadelphia policeman who delivered the message that the victims' had been released. After presenting a self-serving characterization of the money paid by the FBI, Jordan admitted a \$3,000 one-time payment and weekly payments from \$25 to \$100 by the FBI. Jordan was inconsistent in his willingness to admit parts of his substantial criminal record that included fraudulent conduct.

¹⁹ Throughout the trial, government counsel neglected to indicate on the record which defendant was identified when witnesses made identifications by gesture.

²⁰ H.D. Barnette's unredacted confession also identified his brother, Travis Barnette, as having been present for the murders, but that information was redacted from H.D. Barnette's confession as it was admitted in trial.

F. H.D. Barnette (deceased)

The Price trial concluded with a trial exhibit – H.D. Barnette’s redacted November 20, 1964 confession. As previously discussed, H.D. Barnette’s unredacted confession was largely corroborative of Jordan’s testimony. However, because H.D. Barnette was a defendant and did not take the stand, in order to comply with the Sixth Amendment right to confrontation, the names of H.D. Barnette’s codefendants as well as any language that might identify any of them were redacted from the version of the confession introduced at trial. However, because Jordan testified for the government at trial, references to him were not redacted – a fact that focused attention on the glaring difference between Jordan’s account of his own conduct (lookout) versus H.D. Barnette’s recounting of it (shooter).

Because of redactions, the trial exhibit version of H.D. Barnette’s confession was incomplete and confusing (for the reader’s aid the redacted names and information are included inside brackets):

[Travis Barnette] called [Arledge] at his house and said “the Klan had a job” to do and [Arledge] asked H.D. Barnette to go. They went to Meridian [specifically Akin’s Mobile Homes] and were met there by Jordan and [Killen, Bernard Akin and Roberts].

[Killen] told H.D. Barnette and the others that the three civil rights workers would be released from jail; they would catch them and give them a whipping. H.D. Barnette drove in his car with Jordan and [Arledge and Snowden] to Philadelphia. When they arrived in Philadelphia, [Killen] said that there was a “place to bury them,” and “a man to run the dozer to cover them up.” According to H.D. Barnette that was the first time that he understood the civil rights workers would be killed.

The description of the car chase, the abduction, the journey to Rock Cut Road, and the events after the shooting of Schwerner, Chaney and Goodman in H.D. Barnette’s confession, while generally consistent with Jordan’s testimony, are considerably less persuasive after redaction. Of particular note, the description of the events surrounding the break-down of Posey’s Chevrolet is completely redacted from the trial exhibit, thus there is no reference to “someone from Philadelphia” (Townsend) left behind.

As to the shooting itself, H.D. Barnette’s redacted confession recounted that:

[Roberts] pulled Schwerner from the car, spun him around, and asked, “Are you that nigger lover?” Schwerner replied, “Sir, I know just how you feel.” With his left hand on Schwerner’s shoulder, [Roberts] raised a pistol in his right hand and shot Michael Schwerner. He then turned toward the patrol car and pulled out Andrew Goodman, and shot Andrew Goodman.

Jordan said, “Save one for me.” Jordan got Chaney out of the car. As Chaney backed up toward the ditch on the side of the road, Jordan was standing in the

middle of the road facing Chaney. Jordan shot James Chaney, and then said, “You didn’t leave anything but a nigger, but at least I killed me a nigger.”

Also redacted from the confession was H.D. Barnette’s affirmation that the dam was “on Burrage’s property.” Additionally, the redactions excised the activity at the dam site, including that H.D. Barnette saw Burrage and two other men in a car near the dam. Similarly, because of the redactions, Burrage is not identified as the person who provided the gas to burn the victims’ car. Thus, H.D. Barnette’s redacted confession made no reference to Burrage, his conduct, or the killers’ presence at his business.

H. D. Barnette’s unredacted confession also related that when the killers returned to Philadelphia after the murders, Neshoba County Sheriff Rainey warned them that anyone who talked would be killed. That information, too, was redacted.

G. Defense Witnesses

As previously indicated, the defendants’ witnesses far outnumbered the government witnesses – by approximately four to one. They provided alibi and character testimony for all the defendants. Particularly germane to the recent “Emmett Till Act” investigation, defendants Harris and Burrage presented the following witnesses in their defense.

Burrage called eleven witnesses in total. The combined testimony of the first eight witnesses explained that defendant Burrage hosted relatives and friends at his home during the afternoon on June 21. According to the witnesses, Burrage then attended church services in the early evening. At about 8:30 p.m., Burrage’s witnesses testified that he traveled to the home of his sister-in-law, Ruby Davis, in downtown Philadelphia to pick her up and bring her back to his home. Mrs. Davis and Burrage’s wife testified that Burrage did not thereafter leave the Burrage home that evening and that, in fact, Burrage was at home on the telephone speaking with Ruby Davis’ husband at about 1:00 a.m.²¹ The remaining three witnesses called by Burrage testified that he enjoyed a good reputation in the community.

Harris called four witnesses, including his brother, Clarence Harris. Harris’s brother testified that Harris came to his home on the afternoon of June 21, and worked with him on a car until about 8:30 or 9:00 p.m. Harris’s other three witnesses testified that he enjoyed a good reputation in the community.

H. Price Trial Conclusion

Jury deliberations concluded on October 20, 1967, with the seven guilty verdicts previously mentioned. The District Court imposed the legal maximum ten-year prison sentence on two defendants – Roberts, one of the shooters, and Bowers, the state Klan leader who

²¹ This part of Burrage’s alibi established that Burrage was awake in his home just across a country road from his business buildings at 1 a.m. According to both Jordan’s testimony and H.D. Barnette’s unredacted confession, that is approximately the same time when Burrage was at his business buildings assisting the killers.

authorized the killings. The other convicted defendants were sentenced to shorter terms of incarceration – Price and Posey were sentenced to six years; and Arledge, H.D. Barnette and Snowden were sentenced to three years. Jordan, who testified for the government and was, according to H.D. Barnette’s confession the other shooter, pled guilty and was sentenced to a four-year prison term. The defendants, who are all now deceased, began to serve their sentences in 1970 when their appeals were exhausted.²²

V. 2000 Price/Posey Proffers and State Murder Investigation

This matter was revived in 2000, initially because of new information obtained from Cecil Price before his death. After completing his term of federal incarceration, Price returned to the Philadelphia area and worked at various different jobs, including employment with Burrage’s Trucking Company. In the 1990s, he began working as an independent third party Commercial Drivers License (CDL) Examiner, conducting road driving tests for persons attempting to obtain their CDL. Price was caught selling passing test results for personal profit without actually performing the road test.

Because Price’s fraudulent scheme involved the filing of false federal government forms with the Mississippi Department of Public Safety (CDLs come under the jurisdiction of the United States Department of Transportation), he was charged with violating Title 18 United States Code § 1001, false statements. After he pled guilty on December 6, 1999, he was sentenced to three years of probation in February 2000 in return for his agreement to cooperate with the Mississippi Attorney General’s Office by providing information about the 1964 murders of Schwerner, Chaney, and Goodman.

In the summer of 2000, Price proffered information during interviews with the Mississippi Attorney General’s investigators and attorneys. Price said he advised Killen of the arrest through Posey. Later, Killen called Price after dark and told him to come to Jolly’s car lot in downtown Philadelphia. There, Price heard Killen tell a group of Meridian Klansmen that Price would release the victims, who would be stopped by highway patrol officers on their way back to Meridian and turned over to the Meridian Klansmen.

Price admitted in the proffer that he later agreed to stop the victims after releasing them from jail and did so. He insisted that he thought they would only be beaten. Price confirmed that a car broke down during the chase and speculated that it was Posey’s car. He identified Roberts, Jordan, Posey, Arledge, Snowden, and H.D. Barnette as present at the murder scene. He corroborated H.D. Barnette’s contention that the shooters were Roberts and Jordan, adding that most of the individuals present had guns.

Price stated that Killen gave the order to release the “boys” from custody, organized the group, set up the meeting at the car lot, and then attended a wake for his uncle at a funeral home to create an alibi. Price said he later learned from Killen that Killen knew the victims were buried in a dam at a pond.

²² There were no sentencing guidelines in the 1960s and federal judges had wide sentencing discretion.

In May 2001, Price died after falling from a piece of heavy equipment while working in Neshoba County. Rumors that Price's death was not accidental have never been confirmed.

In the spring and summer of 2000, State authorities approached all the other surviving *Price* defendants and many witnesses. Most of them – Harris, Arledge, Snowden, Sharpe, and Townsend – gave general denials when interviewed, claiming to have no information about the murders. Burrage complained of chest pains and went to the hospital. Bowers claimed the only thing he knew about the murders was what he read in the newspapers.

Posey also proffered information to the Mississippi Attorney General. At the same time, Posey insisted that his memory was faulty regarding a number of key facts. He confirmed that Price sought out Killen through Posey so that Killen could get a group together to beat the victims. He claimed that someone whom he could not remember contacted him later on June 21 and told him to go to Jolly's car lot. Another person whom he claimed to be unable to remember told the waiting group that the victims had been released.

Posey stated that he drove with Sharpe in his car south on Highway 19 following the victims. After his car broke down, he got into the victim's station wagon which had already been stopped. Posey said the station wagon was being driven by a Meridian Klansman, whom he claimed he did not know. According to Posey, the victims were shot while he was still inside their station wagon. He identified Price, Jordan, Roberts, H.D. Barnette and Sharpe as present at the shooting scene. After the shooting, he heard Jordan say "killed me a nigger."

After the bodies were loaded back in the station wagon, Posey related that he drove with Sharpe and Jordan. He stated that Jordan said that the group was going to Burrage's pond where they had a bulldozer. He stated that Jordan was at the dam and that he and Sharpe then drove to Burrage's nearby trucking company, where they reconnected with Jordan.

Posey's memory was self-serving as to his own conduct. With the exception of Sharpe and Jordan, he related little of substance about the conduct of, or, in some cases, even the names of, anyone then still alive. Specifically, he did not acknowledge that Townsend was in his (Posey's) disabled car or that Burrage was at the dam site and at Burrage's trucking company. Additionally, Posey maintained that he could not remember whether he saw Killen and Price at Jolly's Car Lot.

Most incredible was Posey's contention that Jordan, not he (Posey), was the one who led the group to Burrage's dam. Jordan, who was from Meridian, was far less familiar with the Philadelphia area than Posey. Posey had a business relationship with Burrage at the time in the small rural town of Philadelphia where they were both life-long residents. Also, Posey had ample motive to falsely implicate Jordan, who had betrayed the Klan and testified in the federal trial against Posey and his codefendants.

Over the next few years, the Mississippi Attorney General and District Attorneys who had jurisdiction over the murders, with assistance from the FBI, were able to supplement previously known evidence with sufficient new evidence (discussed below) to support a state murder indictment. In January 2005, a Mississippi grand jury indicted Killen with three counts

of murder. Despite Posey's self-serving, but still incriminating, proffer the grand jury did not also indict Posey, who died in 2009. Nor were any of the other potential then-surviving subjects indicted. Arledge and Snowden died in 2008, after Killen was convicted.

VI. Mississippi v. Killen Evidence Summary

State prosecutors in Mississippi tried Edgar Ray Killen for the murders of Michael Schwerner, James Chaney, and Andrew Goodman, beginning on June 13, 2005, in Neshoba County. The trial lasted for eight days, and on June 21, 2005 (41 years to the day of the murders), a Neshoba County jury convicted Killen, a lifelong resident of Neshoba County, on three counts of manslaughter.

The case focused on the role of Edgar Ray Killen in planning and facilitating the killings and secret burial of the bodies. The most incriminating evidence against Killen came in the form of recorded testimony from the *Price* trial. Carlton Wallace Miller, Delmar Dennis, and James Jordan, had all died by 2005, but prosecutors introduced their testimony from the *Price* trial as it related to Killen's involvement in the murders.

The state also called two surviving FBI Special Agents. One testified that he was one of the agents who recovered the burned station wagon; he identified photos of the car and the recovery scene. Another testified that he was one of the agents present when the bodies were recovered in the earthen dam; he identified the photos of the victims' bodies at the burial scene.

Joseph Michael Hatcher, who testified in the *Price* trial, testified again, and was more valuable to the government in the *Killen* trial. Hatcher's testimony was consistent with his testimony four decades earlier, but he provided greater detail regarding Killen's incriminating statements regarding the killing and burial of the victims. Hatcher additionally testified that Killen gave him a handgun the day after the murders and asked him to return the gun to the man who had given the gun to Killen. Hatcher added further that Killen boasted that the FBI would not be able to trace any telephone calls to him because he travelled to Meridian to gather Klan volunteers rather than making telephone calls.

The state also called Mike Winstead, who testified that as a ten-year-old boy he overheard his grandfather speaking with Killen. Specifically, he heard his grandfather ask Killen whether he had "anything to do with those boys being killed." According to Winstead, Killen replied, "Yes," and that he was "proud of it."

Family members of each of the victims also testified to their loss. Schwerner's widow testified that COFO's civil rights organizing efforts were not welcomed by many in the community, and that she and Schwerner had previously been threatened.

Killen offered five witnesses in his defense. His brother and sister each testified that Killen was present at a family event until 4:00 p.m. or 5:00 p.m. on June 21, 1964. Killen's brother, Kenneth Killen, further testified that he saw Killen later that evening between 7:00 p.m. or 8:00 p.m. at a funeral home. The defense called David Winstead to testify, and he offered that he believed his brother, Mike Winstead, was lying about hearing the conversation between

Killen and his grandfather. Killen's remaining two witnesses each testified that Killen enjoyed a good reputation in the community.

The jury found Killen guilty on three counts of manslaughter. Thereafter, the court sentenced Killen to twenty years for each count, to be served consecutively for a total of sixty years. Killen remains incarcerated in the Mississippi prison system. The state trial against Killen produced no new evidence against Willis, Burrage, Harris, or Townsend.

VII. Federal "Emmett Till Act" Investigation Summary: 2010 through 2016

A. Emmett Till Act Investigation Overview

Our goal with the federal Emmett Till Act investigation was ultimately to assist the Mississippi Attorney General by seeking additional admissible evidence against persons potentially prosecutable under the state murder statute. Beginning in 2010, we initiated a careful review of the massive federal MIBURN file, particularly its confidential source files. Later, we also reviewed the state's investigative files from the late 1990s/early 2000s, which led to Killen's conviction in 2005. We searched the files with a focus on identifying the universe of known witnesses, as well as other potential witnesses who had not previously been interviewed, or not fully or robustly interviewed. Additionally, we searched for witnesses who might help resolve the credibility of witnesses who might be concealing relevant facts. We further examined potential leads and rumors proffered by non-governmental sources. The FBI thereafter expended considerable effort determining which potential subjects and witnesses were alive and which were deceased. Next, surviving persons had to be physically located.

The FBI determined that only five of the individuals originally identified as participants in the murder conspiracy remained alive in 2010 – Willis (who died in July 2011), Burrage (who died in March 2013), Killen, Harris, and Townsend. As previously indicated, Killen was successfully prosecuted by the state in 2005 for his role in the murders. Regarding the remaining four subjects, we suspected the following: Willis was alleged to have notified the Klan killers that the victims were being released from jail; Burrage owned the land on which the victims were buried and allegedly assisted with their burial and the disposal of the car; Harris allegedly received prior authorization to kill Schwerner and helped in the early evening before the murders to recruit the killers from Meridian; and Townsend was identified as one of the Philadelphia men who came with Killen to Meridian and then later, before the victims were abducted, stayed with Posey's disabled car.

The FBI, often along with Department attorneys, interviewed or attempted to interview every living, competent witness and potential defendant who could be located. Additionally, witnesses who might have information relevant to the credibility of other witnesses were also interviewed. Witnesses who purportedly had competency deficiencies were personally contacted to corroborate the reported mental condition. Some witnesses were re-interviewed several times and vigorously confronted with information that suggested they were not completely forthright. In certain cases, we obtained additional relevant information from reluctant witnesses. We followed every lead to its logical conclusion and queried every potential

witness until we were satisfied that we had attained the full extent of their knowledge and willingness to cooperate.

Additionally, beginning in 2011, the FBI commenced several covert operations aimed at discovery of information relevant to the murders. These covert operations targeted the individuals believed to have knowledge of the murders and were conducted at various times during the course of the investigation under the supervision of Department attorneys and, in one case, pursuant to a sealed federal district court order. While the covert operations revealed some relevant information, they produced neither inculpatory admissible evidence against any subject, nor any reliable, credible exculpatory evidence. We have shared the substance of that information with the Mississippi Attorney General.

As set forth in detail below, we questioned the veracity of the statements that certain witnesses made to the FBI in 2010-11, within the statute of limitations. Accordingly, we utilized a federal grand jury to investigate violations of 18 U.S.C. § 1001. For § 1001 subjects, the knowledge that they were subjects of a federal grand jury investigation could strengthen their concern that federal prosecution was a reality and might thereby motivate truthfulness. Grand jury also permits testimony under oath from subject witnesses and from witnesses with information that might bear on the truthfulness of statements by the § 1001 subjects. Additionally, truthful information relevant to material false statements could have collateral value to the murder investigation. Finally, if false material statements, which were supported by sufficient evidence to bring prosecution, were made in this important federal investigation, federal prosecution would be warranted.

B. Legal Authority, Issues, and Limitations

1. Murder

As mentioned previously, because the federal statute of limitations on the then existing and applicable federal criminal civil rights statutes was five years, any federal prosecution for these offenses is time-barred.²³ Nonetheless, the United States properly reopened the investigation into the murders pursuant to the Emmett Till Act, which specifically authorizes the federal investigation of unresolved criminal civil rights violations that occurred not later than December 31, 1969 and resulted in death. The Attorney General, through the Assistant Attorney General for Civil Rights, and the Director of the FBI are obligated to “expeditiously investigate unsolved civil rights murders . . . [and] provide all the resources necessary to ensure timely and thorough investigations in the cases involved.” The Act further encourages the federal government to coordinate with state and local law enforcement, and to refer cases to state and local prosecutors for evaluation of prosecution under state laws. Thus, our investigation was

²³ A federal prosecution of Harris, who was acquitted in the *Price* trial, is also barred by the Double Jeopardy Clause of the Fifth Amendment. U.S. Const., Amend. V. “To permit a second trial after an acquittal, however mistaken the acquittal may have been, would present an unacceptably high risk that the Government with its vast superior resources, might wear down the defendant so that ‘even though innocent, he may be found guilty.’” *United States v. Scott*, 437 U.S. 82, 91 (1978) (quoting *Green v. United States*, 355 U.S. 184, 188 (1957)).

primarily aimed at seeking evidence that might support a state murder charge. As noted above, we have shared all relevant information with the Mississippi Attorney General for his review and assessment.

2. False Statements

We also explored whether several material witnesses in our investigation may have committed more recent federal crimes – within the statute of limitations – for willfully providing material false information to the FBI in violation of 18 U.S.C. § 1001.

18 U.S.C. § 1001 makes it a crime when a person “in any matter within the jurisdiction of the executive, legislative or judicial branch of the Government of the United States, knowingly and willfully makes any material false, fictitious, or fraudulent statement or representation.” *Id.* at § 1001(a)(2). The term “false, fictitious, or fraudulent” means that the statement “must have a natural tendency to influence, or be capable of affecting or influencing a government function.” *United States v. Shah*, 44 F.3d 285, 288 n.4 (5th Cir. 1995) (quoting *United States v. Markham*, 537 F.2d 187, 196 (5th Cir. 1976)). The government agency need not have actually been misled, *id.*, but “the concealment ‘must simply have the capacity to impair or pervert the functioning of a government agency.’” *United States v. Swaim*, 757 F.2d 1530, 1534 (5th Cir. 1985) (quoting *United States v. Lichenstein*, 610 F.2d 512, 514 n. 5 (5th Cir. 1980)).

The elements necessary to establish a violation of § 1001 applicable to these facts are:

- (1) whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States;
- (2) knowingly and willfully;
- (3) makes any materially false, fictitious, or fraudulent statement or representation.

Interviews conducted by the FBI in an Emmett Till Act investigation are within the jurisdiction of the executive branch because Congress has charged the FBI with conducting such investigations. To establish beyond a reasonable doubt that a material statement is false, the government must prove that the contradictory facts are true. Obviously, an investigation of whether witnesses in this case made material false statements overlapped the effort to seek material facts probative of the murders. Thus, many of the same difficulties facing our Emmett Till Act murder investigation confronted the investigation of § 1001 violations. Unlike the murders, barred from federal prosecution by the statute of limitations, recent material false statements are prosecutable federal offenses that a federal grand jury could properly investigate. In the end, as discussed below in the summaries for the relevant witnesses, we have concluded that we lack sufficient admissible evidence to charge any witness with violating 18 U.S.C. § 1001.

C. Emmett Till Act Investigation Witnesses

We interviewed and, in some cases, re-interviewed surviving witnesses with the ultimate goal of obtaining additional information that might build a prosecutable state murder case against a surviving subject. Some witnesses had not been interviewed in prior investigations. Most witnesses had previously been interviewed and were re-interviewed in an effort to ensure that they revealed all relevant information, especially information that we suspected might have been withheld in the past. Some witnesses were interviewed more than once or under proffer agreements or given polygraph examinations. All reasonable efforts were taken to induce complete candor from witnesses to determine whether further state prosecution was warranted, as well as to determine whether there were prosecutable federal § 1001 violations.

1. **Individuals with Indirect Knowledge Regarding the Murders**

a. Meridian Source

The Emmett Till Act investigation initially produced some fresh evidence in December 2010, when the FBI case agent and a Department attorney interviewed a newly discovered source, who lived in Meridian in 1964 and is now over 70-years-old and living outside of Mississippi. The Meridian Source had a close relationship with Harris during the summer of 1964. The Meridian Source had never been previously interviewed and we believed that Harris might have revealed relevant information to the source. In fact, we learned that Harris had boasted to the Meridian Source that he had planned the murders.

The witness would not acknowledge a relationship with Harris until promised that the source's identity would not be publicly revealed, unless and until the source was needed as a witness in a criminal trial. Even then, the source initially denied knowledge of anything related to the murders. In March 2011, after persistent questioning, the Meridian Source admitted concealing information from the FBI. The Meridian Source signed a written statement that declared that Harris admitted (1) "he hated Blacks and liked to hurt them," (2) "those three civil rights workers were killed by the Klan," and (3) "they got what they deserved." Most significantly, the Meridian Source reported that "Pete told me that he was involved in the planning of the killings of the civil rights workers but that he was not there when it happened."

This information is consistent with prior information incriminating Harris. Significantly, Harris's admission to the source that he was "involved in the planning of the killings . . . but that he was not there when it happened" corroborates Jordan's testimony in the 1967 *Price* trial, which would also be admissible against Harris. Specific to Harris, Jordan testified that Harris made telephone calls from The Longhorn Restaurant to recruit Meridian Klansmen to go to Philadelphia with Killen to abduct and assault the civil rights workers who were jailed there. Jordan added that Harris did not go with the killers from Meridian to Philadelphia. These facts about Harris are also confirmed by H.D. Barnette's unredacted confession. Finally, Jordan further testified that Harris had received instructions weeks before June 21, 1964, from Sam Bowers, the state Klan leader, to "eliminate" Schwerner.

The Meridian Source appears credible, given the nature of the relationship with Harris, the initial reluctance to reveal that relationship, the circumstances under which the source ultimately revealed the incriminating information, and Jordan's corroborating testimony under oath in 1967. We are unaware of background information that would raise questions about the witness's credibility. The Meridian Source has nothing to gain by fabricating this information.

However, the Meridian Source is extremely reluctant to testify as a witness in a public trial. Already, since signing the written statement, the source has begun to equivocate, claiming memory problems because of age. While the witness' demeanor belies this suggestion, it would not be difficult for an over-seventy-year-old reluctant witness to convincingly assert a failed memory. It is our best assessment that the Meridian Source could – and probably would – likely claim failed memory if subpoenaed to trial.

b. Klansman Source

In the fall of 2012, we re-connected with an 80-plus-year-old Klansman, an FBI confidential source since 1964. The Klansman Source has demonstrated excellent mental acuity, good physical health, has been consistent, and, appears to be candid. However, the FBI promised that the source's identity would be protected in order to gain his cooperation in the 1960s. Based upon their long-standing relationship and prior assurances necessary to obtain information and to protect the witness, the Klansman Source has a reasonable expectation of anonymity unless the source consents to public exposure.

In September 2012, the Klansman Source related information that was consistent with his 1960s reports to the FBI. Most significantly, he advised that in 1964: (1) Harris was one of 30 Klansmen present at a Klan meeting when Miller announced several weeks before the murders that Bowers had authorized the elimination of Schwerner; (2) a still living Meridian Klansman attended and also led local Klan meetings before the murders; and (3) Harris and the Meridian Klansman were friends and may have attended Klan meetings together. Alone, the evidence that this witness has to offer is somewhat limited. The source simply places Harris at meetings where "elimination" of Schwerner was addressed by someone but not by Harris. The source does not provide information regarding Harris' conduct on the night of the murders. Further, he provided no information regarding the Philadelphia subjects, with whom he was not personally acquainted.

On the other hand, the Klansman Source could provide live testimony to unequivocally corroborate the former testimony from *Price* witnesses Jordan, Miller, and Dennis. Specifically, the source would confirm that Harris attended Klan meetings where the elimination of Schwerner was discussed. The source would further confirm that Harris was present at a Klan meeting from which Klansmen left to assault African-American churchgoers and civil rights workers. At the same time, the Klansman Source would only establish that others, not Harris, spoke about the "elimination" of Schwerner.

As discussed later, the Klansman Source's primary value to the investigation was the information about the Meridian Klansman. The source had observed the Meridian Klansman

leading Klan meetings at his own business establishment before the murders and knew him to be friends with Harris (see discussion of Meridian Klansman in Section VII.C.1.d.).

The source appears authentic and reliable. However, the Klansman Source has never been publicly identified and the FBI wishes to fulfill its 1960 promise to protect his identity, which was necessary to obtain useful information and to protect the source from harm. Accordingly, the source expects not to be subpoenaed to testify unless he agrees to do so. We have a good rapport with the witness, who appeared to enjoy talking about his past experiences, and he may choose to testify. However, our best assessment is that the Klansman Source will likely continue to elect anonymity. Moreover, the probative value of the admissible evidence that the Klansman Source provides is insufficient to override the legitimate interest in honoring a long-standing commitment to a trusted source.

c. Joseph Michael Hatcher

Joseph Michael Hatcher, a 1960s Meridian police officer and Klansman, was an important, but somewhat reluctant, witness in the *Killen* trial, and he had previously testified in the *Price* trial. His testimony covered what he learned from Killen after the murders. According to information from a variety of sources, Hatcher was believed to be a “trusted” Klansman in the summer of 1964. Consequently, we anticipated that Harris and the Meridian Klansman might have confided in Hatcher as Killen had. As a police officer/Klansman, he served as the doorman for the meetings. His regular hangout was The Longhorn Restaurant. As an indication of Hatcher’s trusted Klan status, the day after the murders, Killen gave Hatcher a gun, told him where the bodies were buried, and stated that the FBI would not trace any phone calls to him because he went to Meridian personally to gather the Klan group there. Hatcher attended Klan meetings with Harris and the Meridian Klansman.

Hatcher is in his 70s and still works for the city of Meridian, although no longer in law enforcement. When approached by the FBI in 2010 and 2011, Hatcher insisted that he had no relevant information to offer.

Later, in September 2012, Hatcher agreed to speak with the FBI and Department attorneys. He claimed to have difficulties remembering things that he had expressly told the FBI in the 1960s, even after he reviewed records of his prior statements. After further interview, Hatcher subsequently signed a statement to the FBI admitting that he had seen Harris and the Meridian Klansman attending the same Klan meetings. Soon after signing the statement, Hatcher asserted that his memory was again uncertain about both Harris and the Meridian Klansman and their Klan activity in the 1960s, going so far as to claim he is no longer sure if he knew Harris.

Hatcher has exhibited a suspiciously selective memory, providing no firm information about any person who could still be prosecuted. Hatcher was in a position to learn inculpatory information about Harris and he should know that the Meridian Klansman was an active participant in the Klan in the summer of 1964. He does not otherwise behave like a person suffering from a deficient memory. Nonetheless, Hatcher has nothing new to offer as a witness for the government. Further, we have no admissible evidence to prove that Harris or anyone else

actually confided in Hatcher, nor do we have any admissible evidence to disprove Hatcher's claimed memory failures regarding participants in Klan meetings that took place 50 years ago. Thus, it cannot be established that Hatcher violated 18 U.S.C. § 1001.

d. The Meridian Klansman

The investigation revealed that in the 1960s the Meridian Klansman was Harris's friend, hosted Klan meetings, led some of those meetings, and was present when the killing of Schwerner was discussed. When interviewed by the FBI shortly after the murders, the Meridian Klansman denied being in the Klan or knowing anything about the murders. However, the Meridian Klansman was observed by FBI agents leaving a meeting at The Lamar Hotel in Meridian with the co-conspirators, including Harris and Bowers, after the defendants were indicted. He was persistently hostile toward FBI agents. For these reasons, and other reasons provided by confidential sources, we explored whether the Meridian Klansman had heard incriminating information, including possibly admissions from Harris.

On January 14, 2012, the FBI interviewed the Meridian Klansman. His demeanor was antagonistic. He maintained that (1) he never joined the Klan, (2) if Klan meetings were held at his place of business, he did not know about them and an employee who had a key must have hosted the Klan, (3) Harris only "got tied up with the wrong group," and (4) he knew nothing regarding the murders.

Because other evidence contradicted these statements, in February 2013 the Department advised the Meridian Klansman by letter that he was a subject of a federal § 1001 investigation. The Meridian Klansman retained counsel and on February 20, 2013, he and his attorney met with the FBI case agent and Department attorneys. During a lengthy conversation, the Meridian Klansman conceded that he had permitted the Klan to hold meetings at his business. He claimed that he attended some meetings along with Harris and other *Price* defendants, but insisted that he was not an official member of the Klan. The Meridian Klansman further maintained that he never knew of plans to commit the murders and would have stopped them if he had known. He advised that only Jordan told him about the murders afterwards. Most significantly, the Meridian Klansman persisted in his contention that Harris never admitted involvement in the murders.

It appeared that the Meridian Klansman had relevant information but was reluctant to be a witness against an old friend and the Klan, so he was granted use immunity from criminal prosecution for information provided. Thereafter, the Meridian Klansman engaged in proffer sessions with counsel present, but he continued to vacillate about what he actually knew. Accordingly, the Meridian Klansman was offered transactional (complete) immunity from § 1001 prosecution, if he provided truthful information pursuant to a written agreement, which included a provision that federal and state prosecutors would not use anything the Meridian Klansman said during the subsequent interview against him in a criminal prosecution.

On March 6, 2013, the Meridian Klansman was again interviewed under the terms of the written agreement and affirmed that he had been deliberately withholding information. He agreed to dictate a written statement relating that which he had been withholding. Thereafter, he signed that written statement, even making a change in it that he initialed.

In the March 6, 2013 signed written statement, the Meridian Klansman divulged that Harris had admitted to him his role in the murders. The statement revealed that Harris specifically told the Meridian Klansman (1) “he [Harris] had been OKed to eliminate Schwerner,” before the murders, and Harris said (2) “the FBI was after him [Harris] for organizing the men who went up to Neshoba to kill the boys” after the murders. This information was consistent with Jordan’s testimony and H.D. Barnette’s confession, as well as with the admission that the Meridian Source, who had a close relationship with Harris, revealed a year earlier.

Immediately thereafter, the Meridian Klansman began to equivocate about the truthfulness of the written statement. At the direction of the Department attorney, the FBI agents asked to continue the interview to seek further detail to expand upon the written statement. Counsel objected to continuing at that time, but agreed to schedule a follow-up interview which would include the Mississippi Attorney General because the information in the written statement presented critical admissions by Harris about his participation in the murders. Thereafter, the parties agreed that the Meridian Klansman would continue to proffer under a grant of transactional (complete) federal and state immunity in return for continued truthful information and testimony. On the morning of the date of the next planned proffer, the Meridian Klansman was hospitalized, complaining of heart symptoms.

After further delays, the Meridian Klansman and his counsel met with the Department attorney, the Mississippi Attorney General, and the FBI on April 2, 2013. Through counsel, the Meriden Klansman advised that his written signed statement was not truthful and that he had signed it merely to be able to terminate the interview. At one point in this meeting, the Meridian Klansman spoke directly to Mississippi Attorney General Jim Hood and firmly avowed that the written statement was a lie and he would not so lie under oath.

It is our best judgment, based upon all the surrounding circumstances and other available information, that the Meridian Klansman did – as he related in the signed written statement – hear Harris admit his involvement in the planning of the 1964 murders. However, it is abundantly clear that the Meridian Klansman will continue to refute the truth of that written statement.

Although two inherently inconsistent statements to federal authorities can suffice as evidence of a § 1001 violation, they do not under the circumstance of this case. The Meridian Klansman’s written statement pursuant to the government’s agreement does not allow for the government to use anything said during the interview against the witness in a criminal prosecution. Thus, the resulting written statement is not admissible. Accordingly, we are left with only the Meridian Klansman’s subsequent statements that Harris made no admissions, and no admissible way to refute that claim.

We also considered whether the Meridian Klansman should be charged with making a false statement for his January 14, 2012 denial that he was a “member” of the Klan. Although witness testimony and the witness’s own admissible statements raise questions regarding that denial, the evidence is not sufficient to establish a violation of § 1001. First, the fact that other

witnesses and the Meridian Klansman himself ultimately agreed that he “attended Klan meetings” does not prove that his statement that he was “not a Klan member” is false. He could have attended Klan meetings without being a member, as he claimed, in which case the statement would be true. Second, whether the Meridian Klansman was a “Klan member” as opposed to a person who attended Klan meetings is not necessarily material to an investigation seeking information relevant to the involvement of other persons in the 1964 murders. Third, the Meridian Klansman is over 70 years old and has confirmed health problems. We could not prove beyond a reasonable doubt that his statements regarding fifty-year-old events were intentionally false, as opposed to the product of failed or imperfect recollection. Thus, we have concluded that there is insufficient evidence to support a federal prosecution of the Meridian Klansman under § 1001.

2. Witnesses with Direct Knowledge of Murders/Murder Plan

a. Jimmy Lee Townsend

At the outset of the Emmett Till Act investigation, it appeared from all available information that Jimmy Lee Townsend had knowledge about the murders; specifically, he likely observed Harris’s conduct in Meridian and heard admissions from Burrage. According to both Jordan and H.D. Barnette, a third person from Philadelphia accompanied Killen to Meridian to obtain Harris’s help in recruiting Meridian Klansmen and then remained with the coconspirators until Posey’s car failed them during the chase of the victims. Jordan’s interviews with the FBI unequivocally identified that young man to be Posey’s employee Townsend. Based on this information and Townsend’s inability to provide an alibi, he was arrested and charged in December 1964 and indicted in the original *Price* indictment. He was dropped from the superseding indictment and never re-charged.²⁴

Thereafter, additional information further linked Townsend to the Klan conspirators. Other 1960s FBI sources claimed that Townsend accompanied Posey when he paid Klan money to defendants as the *Price* trial approached. While Townsend persisted in his inconceivable claim that he could not remember what he did the night of the murders, he contradicted himself about the few facts that he did provide federal and later state investigators. Also, when we examined real estate records in 2010, we learned that in the 1970s Townsend purchased land from Burrage, contiguous to Burrage’s own property. And, Townsend later became a minister at Burrage’s church.

Because, according to the accounts of Jordan and H.D. Barnette (both deceased), Townsend remained with Posey’s disabled car, the evidence suggested that Townsend was a teenaged tag-a-long and was not present at the murders. As a result, Harris and Burrage appeared more culpable in the conspiracy, and we hoped to persuade Townsend to divulge his

²⁴ John Doar, former Assistant Attorney General for Civil Rights and one of the prosecutors in the 1967 *Price* trial, advised a current Department attorney that, while he had no specific recollection of why Townsend was not included in the 1967 indictment, he believed that Townsend’s role in the events and his status as a juvenile at the time of the murders mitigated against his prosecution.

knowledge regarding the murders in order to develop sufficient evidence against Harris and (when he was alive) Burrage. If Townsend would cooperate with prosecuting authorities and give truthful testimony, his cooperation could fairly warrant immunity from prosecution. Nonetheless, Townsend persisted in his implausible contention that he cannot recall his actions on June 21, 1964. There is no reason to expect that Townsend will ever retract his denials or incriminate anyone.

In 1964, Townsend was a 17-year-old high school student working for the summer at Posey's gas station outside of Philadelphia on Highway 19. When interviewed by the FBI in 1964, he denied knowledge of the murders but articulated no specific account of his whereabouts on June 21. He denied knowing any of the Meridian Klansmen, including Harris. Over the years in different interviews, he has admitted working at Posey's gas station during the day, but consistently denied recalling his activities that night. In 2000, for the first time, he told state investigators that he was absent from work part of the day to visit his father in a local hospital. There was no such visit on the day of June 21. Hospital records establish that his father, Tom Townsend, was not at the hospital on June 21, but rather was admitted into the emergency room of Neshoba County Hospital in the early morning hours of June 22 at 2 a.m., soon after the bodies of the victims had been buried.

Townsend's professed lack of memory about his action on the night of June 21 warrants heavy skepticism for several obvious reasons. First, June 21 was perhaps the most momentous occasion in Townsend's life; the day the country's attention was turned to his small town. Second, Townsend was arrested in December 1964 and charged in the notorious triple homicide along with nineteen others, including his boss and well-known individuals in his town. Third, it was the Father's Day on which Townsend's own father was rushed to the emergency room. Hospital records established that his ailing father was admitted into the Neshoba County Hospital with heart attack symptoms (a medical condition from which he died within a year) within hours after the coconspirators completed the burial of the victims and left the Old Jolly Farm on June 22. And, while Father's Day was not as widely celebrated in 1964 as it is today, it is reasonable to believe that the coincidence of Townsend's father suffering an apparent heart attack on Father's Day would trigger some recollection of the event in his son's mind. The FBI learned in 1964 that Tom Townsend's now deceased doctor reported that Mrs. Townsend (Tom's wife and Jimmy Lee's mother) encouraged the doctor to falsely recall Jimmy Lee being at the hospital.

Townsend continued to maintain a relationship with Burrage and the other Philadelphia Klansmen over the years. In the early 1970s, Townsend bought land that abutted Burrage's own property and has lived there since. Townsend became a minister at the Center Ridge Church, the church attended by Burrage and his family. After the federal charges were initially lodged, 1960s FBI confidential sources reported that Townsend travelled with Posey and others to collect monetary funds for the Klansmen facing trial. One visit was to Bowers allegedly seeking money to ensure the silence of Herman Tucker, Burrage's bulldozer operator who allegedly helped bury the bodies on Burrage's property. Townsend was in an obvious position to hear admissions from either Burrage or Harris or incriminating information about them.

On December 6, 2011, the FBI interviewed Townsend, who again claimed to know nothing about the murders. He advised that he had been home that night and over the

intervening years had never heard Burrage or anyone admit involvement in the murders or burial. This time, Townsend agreed to a polygraph examination, but he indicated deceptiveness when he denied hearing that Burrage claimed responsibility for the burial of the bodies on his property.

On September 6, 2012, a Department attorney and FBI agent met with Townsend at his home and spoke with him for two hours. We advised him that we suspected that his December 6 statement to the FBI was not truthful and were seeking to establish sufficient evidence to prosecute him for false statements to the FBI. We further advised that, if he instead provided truthful information, we would forego the prosecution of a federal false statement charge and that the Mississippi Attorney General was also willing to forego prosecution for the 1964 murders. Townsend was provided a prepared written "Proffer Agreement" that, if signed by Townsend, would guarantee him immunity from prosecution. Townsend responded that he was not interested in the proposed agreement because he had been truthful. Rather, he insisted that "some boy" confused him with someone else (echoing the defense used by Sharpe in *Price* that Jordan confused him with Townsend).

In the same interview, Townsend again expressed an inexplicable lack of memory about his activities on the evening of June 21-22. He stated that he "thought" his grandfather drove him home from work, but he could not remember specifically being home or even whether he drove his father, with whom he claimed to have a good relationship, to the emergency room or whether he went to the hospital to see his father after he was admitted. Townsend was thereafter confronted with the implausibility of his lack of memory. Townsend offered no explanation for this improbability.

Interestingly, whenever Townsend was pressed about whether Olen Burrage made admissions, regardless of how the question was phrased, Townsend always peculiarly answered with the same words, "Burrage never said [anything] to me or to anyone else in my presence." Carefully repeated phrasing is often an indication that the assertion is true only when framed as the speaker has framed it. Additionally, although arrested, arraigned and present at numerous court hearings with Harris, who has been associated with this celebrated case for as long as Townsend, Townsend claimed that he did not recognize a 1964 picture of Harris and claimed he did not know Harris.

The failed memory is further suspect because Townsend easily recalled the details of a land transaction with Burrage a few years after the murders – reciting without notes the lawyers' names, the dates, the boundaries of land involved, and other innocuous details. Townsend similarly recalled exact details of other contemporaneous events on occasions other than June 21, 1964. When confronted with this anomaly, Townsend could provide no explanation.

In late 2012, the Department sent Townsend a letter that explained his potential criminal exposure and advised him of his right to legal representation. In January 2013 Townsend retained counsel. Assurances from Attorney General Hood regarding immunity from state prosecution and recurring negotiations over the next couple of months with Townsend's attorney did nothing to change Townsend's account.

In February 2013, through counsel, Townsend reiterated that he remembered nothing differently than he had previously expressed, and that, even if he were prosecuted for false material statements to federal investigators, he would continue to maintain that he has no information relevant to the 1964 murders. As Townsend emphatically told us, “Burrage never said anything to me or to anyone in my presence” and “I am satisfied that there is nothing I did wrong that I need to explain when I pass on.” It is our best assessment that Townsend’s expressed lack of memory will not change.

We have concluded that, absent additional evidence, Townsend’s December 2011 and September 2012 claims that he does not recall his activities on the night of June 21, 1964, while far-fetched, are nonetheless not prosecutable as a violation of § 1001. There is no admissible evidence available to contradict Townsend’s account. Jordan is deceased, and his *Price* trial testimony – where Townsend was not a defendant – and his account to the FBI that it was Townsend who accompanied Killen to Meridian and in Posey’s car are all hearsay and inadmissible. The doctor who told the FBI that Townsend’s mother asked him to provide a false alibi is deceased and his account is also inadmissible hearsay.

We are not aware of any admissible evidence that conclusively establishes where Townsend was on the evening of June 21, 1964, or that he ever heard any relevant information about the murders. The implausibility of one’s memory alone, especially the memory of someone over 70 years old regarding events that occurred nearly fifty years ago, is insufficient to sustain a criminal conviction for making knowingly and intentionally material false statement under § 1001. Moreover, Townsend has not provided any information over the last 50 years that incriminates Harris, Burrage, or any other person in the murders.

b. Earl Akin

As previously noted, Jordan testified that “Akin’s son” accompanied Harris and Jordan to Laurel, Mississippi, several weeks before the murders at which time state Klan leader Sam Bowers provided authorization to Harris to eliminate Schwerner. When interviewed by the FBI in 1964, Jordan specifically identified the person who went to Laurel with Harris by his full name – Earl Akin. During our investigation, Earl Akin confirmed Jordan’s assertion that he was present with Harris in Laurel and heard the instructions from Bowers to Harris regarding the killing of Schwerner. His account, however, otherwise diverged significantly from Jordan’s.

Earl Akin was charged in 1964 by the federal government with misprision of felony, a violation of Title 18 United States Code § 4, based upon his 1964 FBI interviews in which he denied any knowledge of who was involved in the murders. That charge was dismissed and the statute of limitations now obviates any federal prosecution. His father, Bernard Akin, was one of the now-deceased 1967 defendants acquitted in *Price*. In 1964, Earl Akin was working for his father at Akin’s Mobile Homes (which also employed *Price* defendants Jordan and Herndon). Akin’s Mobile Homes was a Klan hangout where Meridian Klansmen, including Harris, gathered. However, there is no evidence that Earl Akin was a member of the Klan or that he was present on June 21 when Killen organized the group who would later commit the murders.

Earl Akin is now in his mid-70s. He has been incarcerated in Mississippi for recent, serious state convictions for fraudulent activity unrelated to the murders.

The FBI interviewed Earl Akin on several occasions in 2012. Initially, he denied any knowledge of any information related to the 1964 murders, except that which was in the public domain and only implicated dead persons. For example, he acknowledged that he knew that Roberts, who had been convicted and was already deceased, shot the civil rights workers (a fact established at the *Price* trial), but he claimed that although he knew Burrage, he knew nothing regarding Burrage's connection to the murders.

In a subsequent interview, Earl Akin signed a written statement in which he admitted that he had a relationship with Harris; knew that his father and Harris were Klansmen; and went with Harris on the trip to Laurel, Mississippi to meet with Bowers. He said that Bowers "gave Pete Harris the authority to get rid of the civil rights workers, which I knew meant to kill them." Earl Akin stated that only he and Harris flew in a private airplane to Laurel.²⁵ Significantly, he did not include Jordan as a fellow traveler with Harris to Laurel.

Over the course of several interviews, Earl Akin provided more detail about the Laurel meeting. He advised that his father, Bernard Akin, asked Earl Akin to accompany Harris to meet someone in Laurel and to report back to Bernard Akin. Earl Akin and Harris drove to Laurel together. Akin insisted that Jordan did not accompany them. Once in Laurel, Earl Akin and Harris met with Bowers, and the three spoke in a restaurant. Bowers gave Harris an unequivocal order for the Klan to kill Schwerner. Although Earl Akin's initial written statement uses the words "three civil rights workers," he later clarified that Bowers' order concerned only Schwerner.

Earl Akin maintained that he and Harris had no relevant conversations either during the drive to meet Bowers, or on the drive home. Back at Akin's Mobile Homes, Harris spoke privately to Bernard Akin. Then, Bernard Akin spoke privately with Earl Akin, asking only what the man in Laurel looked like. It seems unlikely that this was the extent of Earl Akin's conversations with his father and with Harris.

Earl Akin's insistence that Jordan did not go to Laurel, raises at least three possibilities. First, perhaps the passage of nearly fifty years has impacted the accuracy of Earl Akin's memory on this point. Second, perhaps he has deliberately not included Jordan to create a conflict that would diminish Akin's value as a government witness and, at the same time, discredit a key government witness. Finally, perhaps Jordan was not present, but falsely claimed to be present for the Bowers meeting in an attempt to increase his value to the government and thereby lessen his time in prison.

Of further significance, Earl Akin sent the FBI bizarre written allegations, and asserted that Harris buried one of the victims' bodies at the dam site. No other source contends that that Harris was at the dam site on June 21-22.

²⁵ When shown records proving that his private airplane was purchased after the killings, Earl Akin withdrew that contention.

While it appears that – just as Jordan claimed – Earl Akin likely heard Bowers give Harris authorization to kill Schwerner, Earl Akin will continue to insist that Jordan was not present for the conversation that he claims to have heard. Earl Akin’s credibility on key points is highly suspect and his criminal history includes crimes that would impeach his credibility as a witness. Earl Akin would be an extremely problematic witness and it is difficult to place confidence in his factual assertions.

c. Edgar Ray Killen

We contacted the attorney representing Edgar Ray Killen in October 2012 to seek his client’s cooperation. We advised that a reduction in sentence was unlikely, but we suggested that it was worth discussing the possibility and advantages of federal custody for his client should Killen provide information useful to the investigation. We asked for an opportunity to meet with Killen to talk about his potential cooperation.

Killen’s attorney contacted his client and responded that Killen advised that he knew nothing about the 1964 murders and that he was unwilling to meet with us. Killen’s attorney further advised that nothing, not even a potential nominal state sentence reduction, would alter his client’s position. A November 2012 letter to Killen’s attorney memorialized his rejection of our offer. Based upon Killen’s consistent denials for the past 50 years that he has any knowledge regarding the murders and the current representations of his attorney that nothing will alter Killen’s position, we concluded that further efforts regarding Killen would not be fruitful.

3. Attempts to Develop Evidence Through Recently Identified Witnesses

a. James Billy Burrage

James Billy Burrage (known as Billy), Olen Burrage’s younger brother, did not testify in *Price*. In the summer of 1964, Billy Burrage had recently moved from Philadelphia, Mississippi to Houston, Texas. In Philadelphia, he had lived in a house on Olen Burrage’s Old Jolly Farm. After the murders, a witness who knew the Billy Burrage family in Texas told the FBI that Billy’s wife had said that Billy was involved in the Philadelphia murders. Billy Burrage was working as a long distance truck driver in the summer of 1964 and thus could have been in Philadelphia on June 21. We speculated that he could have been one of the two unidentified men whom H.D. Barnette claimed to have seen with Olen Burrage in the car near the Old Jolly Farm. Moreover, Billy Burrage has a criminal record unrelated to the 1964 murders.

Billy Burrage was interviewed by the FBI and claimed that he was in Houston on June 21, 1964, and that he had never heard his brother say anything regarding the murders, other than to deny that he (Olen) was involved in them. We have discovered no direct information to contradict any of Billy Burrage’s contentions. In fact, we determined that Olen Burrage did not appear to trust Billy Burrage and it was unlikely that he would have made an admission to him.

b. Harris' Relative

We received a tip from an NAACP official that a family relative of subject Harris had heard Harris make incriminating statements about the murders. The hearsay was rather vague and required clarification from the alleged source.

We contacted the estranged relative by telephone on several occasions in the fall of 2012. He was initially unreceptive, but eventually agreed to meet. Thereafter, he would not answer his telephone to arrange a meeting time and place. We additionally learned that Harris' Relative was receiving medical treatment. Even if the purported witness was willing to meet with us and were to provide relevant information, his strained relationship with Harris suggests a potential bias against Harris and his reported medical condition could raise competency issues. Accordingly, we determined that this potential investigative lead would not lead to information that could be useful in a criminal prosecution of Harris.

c. Jailhouse Sources

Two jailhouse sources surfaced during this investigation – Larry Ellis and James Stern. Both sources made public claims that each had separately developed a close relationship in prison with Edgar Ray Killen, a relationship in which Killen supplied each of them with information inculcating Killen and others in the June 21, 1964 murders. One witness, Stern, was an unlikely confidante of Killen's as he is African American.

The FBI interviewed and collected documents from both sources. Despite their public claims, neither the individuals nor the information they supplied were credible or substantively useful to our investigation. In short, what was advertized publically – that Killen had made relevant admissions incriminating others – was not what was delivered by these self-promoting witnesses.

d. Choctaw Women

The FBI interviewed two women from the Choctaw Indian Tribe who were with Deputy Price when he visited Posey's gas station on the afternoon of June 21, 1964. Neither of the women had any information relevant to any surviving subjects of our investigation.

e. County Coroner's Juror

A surviving member of the Neshoba County Coroner's jury that conducted an investigation of the murders was also rumored to have been a member of the Philadelphia Klan chapter in 1964. The FBI located the surviving County Coroner's Juror in 2013 and attempted to interview him. He was a resident of a Neshoba County nursing home and, according to his daughter, he suffered from dementia. The FBI attempted to speak with the County Coroner's Juror and found nothing to contradict the daughter's contention.

4. Attempts to Develop New Evidence Through Previously Identified Witnesses

a. Catherine Tucker

Catherine Tucker is the widow of Herman Tucker, an acquitted *Price* trial defendant who worked as a bulldozer operator for Olen Burrage during the spring and summer of 1964 building the dam on the Old Jolly Farm. At the *Price* trial, Jordan testified that, although he did not see the bulldozer operator who buried the bodies, he heard him referred to as “Herman.” H.D. Barnette’s confession described a man matching Herman Tucker’s general physical description as the bulldozer operator who accompanied Burrage to the burial site. Katherine Tucker testified in *Price* as an alibi witness. She claimed that Herman Tucker arrived home at 9:00 p.m. after working at the dam site on June 21, 1964, and remained at home all night.

Confidential sources claimed that Herman Tucker received money from the Klan to keep silent. In October 2013, the FBI and Department attorneys interviewed Mrs. Tucker to explore whether she might now provide a different account than what she provided at the *Price* Trial. However, Mrs. Tucker continued to insist that her husband did not leave their home on the evening of June 21, 1964, and that she knew nothing to inculcate Olen Burrage in the murders or burials. She also acknowledged that she had been employed by Burrage Trucking subsequent to the murders and that she and Olen Burrage share grandchildren from the marriage of their children.

b. Burrage Family “Alibi” Witnesses

Of the eight witnesses Olen Burrage presented in the *Price* trial, three were still alive and interviewed pursuant to the Emmett Till Act investigation – Burrage’s wife, Audine, his then sister-in-law Ruby Davis, and Clifton Leon Myer, who later became an in-law by the marriage of the two men’s children. Each provided information consistent with their 1967 testimony.

The *Price* testimony, and consistent recent statements of Audine Burrage and Davis put Olen Burrage at his home across a country road from his trucking business talking on the telephone to R.P. Davis (Ruby Davis’s husband, whom they claimed was in Indiana at the time of the call) at 1 a.m. on June 22, 1964, approximately the same time that Jordan and H.D. Barnette claim they saw Burrage at his business complex supplying gasoline to the killers after the burial. These witnesses thus establish that Burrage needed only to cross the road to participate in the crime.

Myer, who had visited Burrage earlier in the day, but was not present at the relevant time, did not report seeing any of the coconspirators at the Burrage home or business complex when he visited during the afternoon. We have no admissible evidence to contradict or challenge what these witnesses have consistently stated.

c. Mrs. Cecil Price

The FBI visited former Deputy Cecil Price's widow at her home in 2010 in an attempt to interview her. Mrs. Price would not speak with the agents. We have no specific reason to believe that Price confided anything about the murders to his wife.

d. Additional Meridian Source

An additional surviving Meridian 1960s FBI confidential source was re-interviewed during the Emmet Till Act investigation to determine if the source had any information relating to Harris or other relevant information. The source convincingly claimed to know nothing relevant beyond what was previously provided to the FBI that does not advance our investigation. We have no contradictory information to question the truthfulness of that assertion. Moreover, the source has serious medical problems that prevent him from leaving his home.

D. Emmett Till Act Investigation/ Subjects

As previously discussed, we considered four individuals alleged to have participated in the events related to the murders as the initial subjects of our Emmett Till Act investigation. Richard Andrew Willis died soon after the investigation was commenced. For the reasons discussed in Section VII.C., we focused on Jimmy Lee Townsend as a subject of our § 1001 investigation with the goal of persuading him to proffer information related to the surviving Emmett Till Act subjects, Harris and Burrage. In the course of the investigation, we also attempted to interview Harris and later, through their counsel, we provided Harris and Burrage opportunities to present their accounts.

1. James Thomas "Pete" Harris

James Thomas "Pete" Harris has never acknowledged to the FBI or to state investigators any involvement in or knowledge about the murders. As discussed in the summary of the *Price* trial, Harris presented an alibi through his brother. That alibi was inconsistent with what Harris had told the FBI soon after the murders (that he was at home rather than with his brother).

During the recent Emmett Till Act investigation, Harris demonstrated a continued resolve to remain silent. The FBI visited Harris at his home in Meridian to seek an interview on January 12, 2011. Harris stated that an attorney had advised him "not to speak to anyone." Harris did not indicate whether he was represented by this attorney.

In November 2012, the Department sent Harris a letter inviting him to meet with a Department attorney, along with his legal representative, should he have one, to answer our questions and to provide his account of the events. The letter also advised Harris that he had a Fifth Amendment privilege to decline to engage in such an interview. A paralegal/investigator from the Department called Harris at his home to confirm that he had received the letter after he did not respond. Harris advised that he had received the letter. When asked if he had any questions regarding the matter, he said he did not.

After exhausting other investigative leads, in October 2013, the Department sent a letter to a Meridian, Mississippi, attorney representing Harris, offering Harris an opportunity to provide information to this investigation. Thereafter, Harris's attorney advised a Department attorney by telephone that he would convey the message to Harris but that he would recommend that any conversation with the government was not in Harris's interest. In a November 2013 letter, the Department reiterated its willingness to hear a proffer from Harris, but Harris's attorney declined to respond. Our letter of January 17, 2014, to Harris's counsel memorialized our understanding that Harris is not interested in an opportunity to relate his version of events.

2. Olen Lovell Burrage

Olen Lovell Burrage denied knowledge of the murders when the FBI executed the warrant to search the Old Jolly Farm back in 1964. Later, when state investigators attempted to interview him in 2000, Burrage went to a local hospital with heart attack symptoms.

In November 2012, an attorney representing Burrage contacted the Department. He had learned that we were interviewing Burrage family members. We met with the attorney and offered Burrage an opportunity to present his account. After consulting with his client, in December 2012, the attorney responded that, due to Burrage's age and health, an interview was not possible. Burrage died in March 2013.

E. Potential Forensic Evidence

We received rumors regarding the possible continued existence of the guns used during the murders. The FBI explored every allegation. Based upon all available information related to the murders and the cover-up thereafter, we believe that all guns were likely disposed of or destroyed. In any event we found no reliable information that might lead to the discovery of a relevant weapon.

Forensic medical examiner Dr. Michael M. Baden stated that he was consulted by state prosecutors prior to the *Killen* trial. He said that, based upon the 1964 medical examiner's report, bullets still in James Chaney's interred body could be matched to the gun that fired them. However, the government has no gun associated with the murders. All efforts to track down the whereabouts of a murder weapon have been unsuccessful.

Moreover, all the individuals known or suspected to have been present for the murders are now deceased. Thus, even if we located a gun used in the murders and positively matched it to bullets extracted from Chaney's body, it would not advance a prosecution against any living subject.

VIII. Analysis of Evidence Regarding Surviving Subjects

The decision regarding the initiation of a state murder or other state criminal prosecution is properly the province of Mississippi State authorities. As such, although we proffer observations about the strengths and weaknesses of the existing evidence relevant to Townsend

and Harris, we do not make any recommendation. Further, an analysis of the evidence related to the now deceased Willis and Burrage would be an unproductive exercise as no prosecution could result.

A. Jimmy Lee Townsend

Our investigation focused on Jimmy Lee Townsend as a potential witness to inculcate Harris and, before his death, Burrage. Because of the limited extent and nature of Townsend's believed involvement in the murders, the Mississippi Attorney General and the Department were willing to grant him immunity from all prosecution should he have provided truthful information. Nonetheless, Townsend consistently maintained that he knew no information related to the murders and was not involved in them. No further admissible evidence was discovered during our investigation to inculcate him.

Unlike the other living subjects Killen and Harris, Townsend was not included as a defendant in the final *Price* indictment. Because he was not a trial defendant, deceased witness Jordan's testimony in *Price* regarding Townsend's conduct, as well as his unequivocal incriminating information provided to the FBI that Townsend accompanied Killen to Meridian to recruit Klansmen and that he was later left on the roadside with Posey's disabled car – is hearsay not admissible under the former testimony hearsay exception.

Accordingly, the only information of Townsend's involvement in the murders remains: (1) the account of the deceased cooperating government witness James Jordan, in which he maintained Townsend accompanied Killen and later the killers, but was not at the scene of the murders (hearsay, not admissible under the former testimony exception); (2) Townsend's own inability or unwillingness to account for his conduct on the night of the murders; (3) his relationship with known participants in the murders; and (4) confidential source hearsay information that Townsend was present when financial payments were made to defendants in the *Price* prosecution. During the course of our investigation, we were alert for any new information that would establish Townsend's own involvement in the events of June 21. However, we discovered no other witness or admissible evidence relevant to the prosecution of Townsend for the murders or for false statements to federal officials.

B. James Thomas "Pete" Harris

Regarding Harris, much of the information discussed in this report, while incriminating, would be inadmissible in a state murder trial against him or has been provided by aging, reluctant witnesses who have begun to assert memory problems. Other information would have limited probative value, merely establishing his presence at Klan activities.

The single most incriminating evidence is provided by the deceased government cooperator, Jordan. While Jordan testified in *Price* that Harris received state Klan leader Bowers' authorization to kill Schwerner, no evidence demonstrates that Harris ever conveyed that instruction to anyone else. Rather, Jordan and several other witnesses heard other Klansman, not Harris, speak about killing Schwerner, in some cases in Harris' presence. Moreover, the only sources who attribute incriminating conduct to Harris on the day of the

murders, Jordan and H.D. Barnette, also maintained that they did not learn the victims would be killed until Harris was no longer present.

The Mississippi Attorney General is uniquely aware of what former testimony from the *Price* and *Killen* trials would be admissible, as he faced the same issues in the prosecution of Killen. Some information, such as H.D. Barnette's confession, would be excluded in trial because the deceased source of the information never testified at trial against Harris. Other information would be excluded because that source is now deceased or is a protected confidential source, like the Klansman Source, and therefore may not be available to testify.

Jordan's *Price* trial testimony would likely be admissible against Harris under the former testimony hearsay exception. However, while Jordan testified that Harris made telephone calls to recruit Meridian Klansmen for Killen, he also testified that Killen was looking for volunteers to "whup their asses" not explicitly to abduct and kill the civil rights volunteers. Jordan's testimony that Jordan did not know that killings were planned until they actually occurred is undercut by his own testimony that he was present when Bowers conveyed an order to Harris to have Schwerner eliminated. At the same time, Earl Akin is a living witness who, if believed, would contradict Jordan's former testimony. Earl Akin claims to have overheard the same conversation between Bowers and Harris but insists that Jordan was not there. As discussed, Jordan and Earl Akin each present their own credibility concerns. We are aware of nothing that would definitively credit the account of one witness over the other.

The *Price* trial testimony of Carlton Miller and Delmar Dennis would also likely be admissible against Harris. They testified that Harris was at Klan meetings where others announced the "elimination" had been approved or complained that it had been delayed too long. But, neither witness testified that Harris himself spoke at those Klan meetings. In fact, none of the former testimony includes any admission of culpability by Harris to any witness.

As set forth above, certain surviving witnesses admit to knowing information that incriminates Harris. Most significantly, the Meridian Source provides an admission by Harris that corroborates Jordan's testimony that Harris helped plan the abduction and killings. The Klansman Source corroborates the testimony of Jordan, Miller, and Dennis that Harris was present at meetings when "elimination" was discussed by others, but not by Harris. We have discussed the issues that impact the Meridian Source's value as a witness. Further, even if the Klansman Source could be persuaded to testify, his testimony would have limited probative value. The source corroborates the former testimony by Jordan, Miller, and Dennis, which is limited to Harris's presence at Klan meetings where others, not Harris, discussed Schwerner's "elimination." Such qualified evidence must be balanced against the long-standing promise to protect a trusted source's identity.

Earl Akin, Michael Hatcher, and the Meridian Klansman raise other issues impacting their value to a state prosecution. Earl Akin presents substantial reliability and credibility concerns. Hatcher may well know more than he has admitted regarding Harris. After equivocation, Hatcher emphatically denies knowing any incriminating information regarding Harris or any living person. Finally, the Meridian Klansman has emphatically retracted the incriminating information that he at one time provided against Harris.

The evidence against Harris appears now to include: (1) Jordan's former testimony, restricted as it was presented in *Price to Bowers*' "elimination" authorization (this time impeached by Earl Akin's testimony) and Harris' actions in Meridian at The Longhorn and Akin's Motor Homes; (2) the former testimony of Jordan, Miller, and Dennis that Harris attended Klan meetings where the killing of Schwerner was discussed by others; (3) potentially the Klansman Sources' testimony to corroborate the former testimony of those witnesses; and (4) possibly, although not certainly, the Meridian Source's testimony that Harris admitted that he helped plan the killings. Only Mississippi authorities have the necessary understanding of Mississippi law to determine whether the available admissible evidence is sufficient to meet the burden of proof required to establish murder or another prosecutable state criminal charge.

IX. Conclusion

It has been our goal in this Emmett Till Act investigation to assist the state in the critical decisions it must make. This report is intended to provide as fair an analysis of the available evidence as is practical to help the Mississippi Attorney General make a fully informed decision. We have assessed the evidentiary strengths and weaknesses of the information related, the probative value of what a witness has said, the likelihood that the witness will be willing to testify in public, and if so, our best view as to whether a witness's account will remain firm should the witness testify at a public trial. Obviously, the willingness of surviving witnesses to cooperate fully rather than minimizing their knowledge with false denials or feigned memory problems is a factor to consider in analyzing the strength or weakness of a potential prosecution. Finally, nothing contained herein is intended to favor either state prosecution or declination of prosecution.

It is appropriate to close this report with an observation made in its Introduction. With the passage of nearly fifty years, few persons with any direct knowledge of the facts relevant to the June 21, 1964 murders still remain alive. Most of the original cooperators and confidential sources are deceased. Many of these elderly witnesses have understandably imperfect recollections. Other witnesses are reluctant to provide information. Some witnesses, despite comprehensive efforts – including pursuit of evidence to support federal prosecution for false statement, nonetheless appear to have accomplished their intention to continue to conceal crucial relevant information. These realities impacted our investigation and the current prospects of uncovering any further information useful for prosecutive purposes.

But, it should also not be forgotten that nine men have been held accountable for this crime. Heroic efforts by the FBI and Department's Civil Right Division enabled the successful federal prosecution of eight Klansmen, none of whom would otherwise have been brought to justice by the civil rights era Mississippi State authorities. Thereafter, an equally remarkable 2005 effort by modern era Mississippi prosecutors resulted in yet one more criminal conviction in these tragic murders. Seven Klansmen who directly participated in this horrific killing and the state Klan leader who authorized the murders were incarcerated and have now passed on. The Klansman who, as much as anyone, facilitated these racist murders will spend his remaining years behind bars. Regardless whether all those responsible have or can be held accountable, the deaths of Michael Schwerner, James Chaney, and Andrew Goodman have been thoroughly and

aggressively investigated and reinvestigated and have thus received some measure of vindication.

Attachment A
Defendants, Witnesses and Others Related to June 21, 1964 Murders
(in alphabetical order)

Arledge, Jimmy deceased – (Meridian) convicted *Price* defendant, present at murders.

Akin, Bernard L. deceased – (Meridian) acquitted *Price* defendant, owner of Akin's Mobile Homes, allegedly present when Killen came to Meridian to recruit Klansmen.

Akin, Earl – (Meridian) Bernard's son, allegedly at meeting with Harris where Bowers authorized "elimination" of Schwerner.

Barnette, Ethal Glenn "Hop" deceased – (Philadelphia) mistrial *Price* defendant, former Neshoba County Sherriff.

Barnette, Horace Doyle "H.D." deceased – (Meridian) convicted *Price* defendant, confessed he was present at murders.

Barnette, Travis Maryn deceased – (Meridian) acquitted *Price* defendant, brother of H.D. Barnette, conflict whether present at murders.

Bowers, Sam Holloway deceased – (Laurel, MS) convicted *Price* defendant, leader Mississippi Klan, authorized "elimination" of Schwerner.

Burrage, James Billy – (Philadelphia) brother of acquitted *Price* defendant Olen Burrage, residing in Houston in 1964.

Burrage, Olen Lowell deceased – (Philadelphia) acquitted *Price* defendant, owner Old Jolly Farm where bodies buried, allegedly assisted burial.

Burkes, Otha deceased – (Philadelphia) police officer charged, but dismissed, as *Price* defendant.

Chaney, James deceased – (Meridian) local volunteer, Mississippi Congress of Federation Organizations, killed June 21, 1964.

Dennis, Delmar deceased – (Meridian) Klan leader, testified in *Price* about Klan meetings and discussions.

Goodman, Andrew (New York) – recent volunteer, Mississippi Congress of Federation Organizations, killed June 21, 1964.

Harris, James Thomas "Pete" – (Meridian) acquitted *Price* defendant, allegedly recruited Meridian Klansmen on June 21 after obtained Bowers' approval to "eliminate" Schwerner.

Hatcher, Joseph Michael – (Meridian) 1964 police officer, testified in *Price* and Killen about Klan meetings and Killen admissions.

Herndon, Frank J. deceased – (Meridian) acquitted *Price* defendant, allegedly recruited Meridian Klansmen for Killen on June 21.

Jordan, James Edward deceased – (Meridian) convicted *Price* defendant, testified for government at *Price* trial & present at murders.

Killen, Edgar Ray – (Philadelphia) mistrial *Price* defendant, convicted *Killen* defendant, recruited Meridian Klansmen

Klansman Source – (Protected ID) attended 1964 Klan meetings with Harris and Meridian Klansman when "elimination" discussed.

Meridian Source – (Protected ID) 1964 Harris friend, heard admission by Harris.

Miller, Carlton Wallace deceased – (Meridian) 1964 police sergeant, attended Klan meetings when "elimination" discussed.

Posey, Billy Wayne deceased – (Philadelphia) convicted *Price* defendant, present at murders.

Price, Cecil Ray deceased – (Philadelphia) convicted *Price* defendant, Neshoba County Deputy Sheriff.

Meridian Klansman – (Meridian) 1964 Harris friend, who attended Klan meetings.

Rainey, Lawrence Andrew deceased – (Philadelphia) acquitted *Price* defendant, Neshoba County Sherriff.

Roberts, Alton Wayne deceased – (Meridian) convicted *Price* defendant, present at murders.

Schwerner, Michael deceased – (New York) volunteer, Mississippi Congress of Federation Organizations, killed June 21, 1964.

Sharpe, Jerry McGrew deceased – (Philadelphia) mistrial *Price* defendant, allegedly accompanied Killen to Meridian, conflict whether present at murders.

Snowden, Jimmy deceased – (Meridian) convicted *Price* defendant, present at murders.

Townsend, Jimmy Lee – (Philadelphia) allegedly accompanied Killen to Meridian and remained with Posey's disabled car.

Tucker, Herman deceased – (Philadelphia) acquitted *Price* defendant, bulldozer operator Old Jolly Farm

Warner, Oliver Richard deceased – (Meridian) storeowner originally charged, but dismissed, as *Price* defendant.

Willis, Richard Andrew deceased – (Philadelphia) acquitted *Price* defendant, policeman allegedly helped Deputy Price alert Klansmen in Philadelphia.

Meridian *Price* Defendants

Arledge, Jimmy deceased

Akin, Bernard L. deceased

Barnette, Horace Doyle "H.D." deceased

Barnette, Travis Maryn deceased

Harris, James Thomas "Pete"

Herndon, Frank J. deceased

Jordan, James Edward deceased

Roberts, Alton Wayne deceased

Snowden, Jimmy deceased

Philadelphia *Price* Defendants

Barnette, Ethal Glenn "Hop" deceased

Burrage, Olen Lowell deceased

Killen, Edgar Ray

Posey, Billy Wayne deceased

Price, Cecil Ray deceased

Sharpe, Jerry McGrew deceased

Tucker, Herman deceased

Willis, Richard Andrew deceased

Laurel, MS *Price* Defendant

Bowers, Sam Holloway deceased