

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-72-2287

September 4, 2018

Date

To: Chief, Criminal Section

Re: Samuel "Tip" Hunter (Deceased)  
Albert Mann (Deceased)  
Ed Lee (Deceased)  
Brownsville, Tennessee – Subjects  
Elisha Davis (Deceased)  
Elbert Williams (Deceased)  
Jack Adams (Deceased) – Victims  
CIVIL RIGHTS

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**Case Synopsis**

On June 20, 1940, Elbert Williams and Thomas Davis, both African-American men who were members of the NAACP in Brownsville, Tennessee, were abducted from their homes by Sheriff Samuel "Tip" Hunter, taken to the local jail, and questioned about the NAACP's activities. Thomas Davis was released from jail into a waiting mob, but escaped unharmed. Williams's body was discovered three days later, on June 23, 1940, in the Hatchie River. Just a few days before Williams and Thomas Davis were abducted, Thomas's brother Elisha Davis had been abducted from his home by Sheriff Hunter, Police Officer Charles Reed, and a mob of white men. Elisha Davis was taken to a nearby river where he was questioned about the NAACP's activities and told he would be killed unless he left town, which he did immediately. Another African-American man, Jack Adams, was brought to the river at the same time that Elisha Davis was threatened, but Adams was released unharmed. The men subject to abduction were all either founding members, or suspected members, of the recently-formed NAACP chapter in Brownsville. Chapter members had begun voter-registration efforts in the African-American community just a few months before the abductions began.

A federal investigation began immediately after Elbert Williams' death but was closed in 1942 without convening a federal grand jury. A state grand jury was convened but was adjourned without issuing any indictments. Last year, the United States Attorney's Office for the Western District of Tennessee reviewed this matter and, after careful consideration, determined

that going forward with a prosecution would be impossible. This year, the Civil Rights Division separately reviewed this matter at the request of Jim Emison, a Tennessee attorney and cold-case advocate, who has studied and written about this incident. The Civil Rights Division has reached the same conclusion as the United States Attorney's Office for the Western District of Tennessee. For the reasons stated more fully below, this matter should be closed without prosecution or referral. The statute of limitations has long run on any federal civil rights crime and there is no basis for federal prosecution of any other crime. Moreover, the absence of any identifiable living subjects or eyewitnesses, coupled with the fact that the passage of more than 75 years makes it unlikely that any living perpetrators or eyewitnesses would be identified, militates strongly against prosecution.

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Trial Attorney

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To: Records Section  
Office of Legal Administration

The above numbered file has been closed on this date.

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Date

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Deputy Chief, Criminal Section

### **Factual Background**<sup>1</sup>

Elbert Williams, together with other residents of Brownsville, Tennessee, established a local chapter of the NAACP in 1939. Those forming the chapter hoped that through the NAACP they could register and exercise their right to vote and begin to address the growing racial problems in Brownsville. The following spring, a group of five NAACP members – including Reverend Buster Walker, the chapter's president, and Elisha Davis – visited the Brownsville County Registrar's office with the intent of registering to vote. From there they were directed to Judge T.J. Pearson, who told them that they would need to see the Election Commissioner to register but that registration would not begin until August. Afterwards, prominent members of

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<sup>1</sup> The following is taken from FBI investigative reports, affidavits provided by victims and others, and contemporaneous letters and memoranda written to and from interested parties – to include NAACP officers and counsel, the United States Attorney, the Director of the Federal Bureau of Investigation, and Department of Justice officials.

the white community, including the police chief, the mayor of Brownsville, and a former mayor of Brownsville, warned both Reverend Walker and Elisha Davis<sup>2</sup> that there would be “trouble” if they registered to vote and/or encouraged others to do so. The men perceived this “warning” as a threat. Following these conversations, no member of the NAACP, nor any other member of the minority community in Brownsville, registered to vote for the 1940 election.

About a month after the NAACP members’ aborted voter registration efforts, a mob of fifty or sixty white men came to Elisha Davis’s house in the middle of the night. Elisha and his wife would later identify several of the men, including Brownsville Sheriff Samuel “Tip” Hunter, Brownsville Police Officer Charles Reed, and Albert Mann,<sup>3</sup> a local businessman. As Hunter and Reed forced Elisha into a waiting car, Mann told XXXX that they were going to kill Elisha.

Sheriff Hunter and Officer Reed drove Elisha Davis to Reverend Walker’s home.<sup>4</sup> When the men could not find Walker, they continued on to the Forked Deer River a few miles outside of Brownsville, where members of the mob were waiting. As Elisha was pulled from the car, he saw Jack Adams,<sup>5</sup> another black man from Brownsville who had been brought to the river. Albert Mann initially threatened to kill both Elisha and Adams but later told them he would let them go if they gave him information about the local NAACP chapter and its members. Adams was released when members of the mob realized he was not who they thought he was. Elisha told Mann what he knew about the NAACP and the mob released Elisha when he promised to leave town and never return. Elisha fled to Jackson, Tennessee, that night, leaving behind his wife and seven children, and abandoning his local business.

A few days later, on June 20, 1940, Sheriff Hunter, Ed Lee, and XXXX abducted Thomas Davis from his home, forced him into a waiting car, and drove him to Elbert Williams’s home.<sup>6</sup> During the ride, Hunter told Thomas that they were “going to break up the negroes around Brownsville who wanted to vote.” They then forced Williams into the car with Thomas and took both men to the police station. After questioning Thomas and Williams about their NAACP

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<sup>2</sup> To distinguish them from one another, Elisha Davis and Thomas Davis, who are brothers, and XXXX, who was married to XXXX, are often referred to in this document by their first names.

<sup>3</sup> Elisha Davis also identified XXXX, XXXX, XXXX, XXXX, XXXX, and XXXX.

<sup>4</sup> Elisha Davis said that there was a third, unidentified man also in the car.

<sup>5</sup> Elisha Davis initially identified this person as XXXX.

<sup>6</sup> A few days before Thomas Davis was taken from his home, Ed Lee directed Thomas to discourage others from attending NAACP meetings if Thomas wanted to keep his job. Lee also promised to give Thomas’s brother Elisha a job in Lee’s factory if Thomas did, in fact, discourage others from attending NAACP meetings.

activities, Hunter eventually released Thomas into a waiting crowd of white men. Thomas was able to escape unharmed and fled immediately to Jackson, Tennessee. Thomas would later confirm that Williams was still inside the jail when Thomas was released. Williams was not there, however, when his wife, Annie Williams, came to the station looking for him early the next morning.

Elbert Williams's body was found floating in the Hatchie River in Brownsville on June 23, 1940. The funeral home operator said that Williams's body was so badly swollen that he could not tell whether Williams had been the victim of violence; the coroner agreed. Annie Williams, however, was summoned to the river after her husband's body was found and later swore in an affidavit that it was "beaten and bruised and there were holes in the chest." According to Annie, her husband's body was quickly "taken out of the water, put in a box and taken away" because the coroner said her husband "had to be buried at once."

### **1940 Federal and State Investigations**

The United States Department of Justice immediately began a civil rights investigation into Elbert Williams's death. In the meantime, State authorities convened a grand jury and, according to Judge Bond, the grand jury interviewed "everyone, colored or white, who had been involved in the rumors of the alleged lynching." According to the foreman of the grand jury, after a three-day investigation the grand jury "could not establish the identity of the persons responsible for the outbreaks" of violence among the black and white communities in Brownsville. The state grand jury thus failed to return any indictments.

When interviewed by the FBI, Sheriff Hunter and Officer Reed admitted that they brought Elbert Williams and Thomas Davis to the police station after Hunter heard that the two men were going to host a joint NAACP meeting with members from Jackson and Brownsville. According to Hunter, he thought there might be "trouble" between the two groups. Reed told the FBI that he did not stay at the station for very long and when he returned early the next morning, both Thomas and Williams were gone. Hunter explained that he released Thomas and later released Williams in the presence of XXXX, a white man who worked as a XXXXX for the railroad.<sup>7</sup> Hunter denied seeing Williams again until his body was discovered in the river, and he denied ever threatening Walker and Elisha Davis about their voter registration efforts. Hunter's statements to the FBI were consistent with his reported testimony before the state grand jury.

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<sup>7</sup> XXXXX confirmed Sheriff Hunter's account. XXXXX said that he accompanied Hunter to the jail after running into him on his way home from work and that, after Hunter released Williams, he and Hunter went to a restaurant to have coffee.

The FBI interviewed four of the seven civilian men<sup>8</sup> Elisha Davis had identified as being among those who abducted him and/or threatened him at the river. Each denied knowing anything about voter intimidation and each denied involvement in Elisha Davis's abduction and in Elbert Williams's abduction and murder. The FBI did not interview the two civilian witnesses whom Thomas Davis had identified as being among those who abducted him and Williams. None of the other witnesses the FBI interviewed admitted to knowing about, participating in, or witnessing Williams's abduction and/or murder.

NAACP Special Counsel Thurgood Marshall traveled to Brownsville in December of 1941. He identified and interviewed two additional witnesses whom the FBI had been unable to locate – including Jack Adams – and reported his findings to Victor W. Rotnem, Chief of the Criminal Division's Civil Rights Section. On January 23, 1942, Assistant Attorney General Wendell Berge informed Marshall that the Department of Justice would close its investigation into the matter because “there did not appear to be sufficient evidence to warrant prosecution.”

The available investigative file does not indicate whether anyone performed an autopsy of Elbert Williams at the time of his death. C.A. Rawls, the undertaker who handled Williams's remains, told the FBI that, due to its condition, he could not tell whether Williams's body showed signs of a violent assault; Bill Cox, the coroner, appears to have confirmed Rawls' account.<sup>9</sup> These accounts are directly contradicted by Annie Williams's statement that her husband's body appeared “beaten and bruised and there were holes in [his] chest.” According to Jim Emison and internet reports, the exact location of Williams's final resting place within the Taylor Cemetery in Haywood County, Tennessee, has not been identified.

### **2016-2017 Investigation**

In February of 2016, the United States Attorney's Office for the Western District of Tennessee reexamined this case to determine the viability of a prosecution and concluded that further investigation and prosecution was not warranted, given the passage of time since Elbert Williams's death and the expiration of applicable statutes of limitations. The Civil Rights Division's Criminal Section, after receiving a referral from Jim Emison, re-opened the case in 2017 pursuant to the Department of Justice's Cold Case Initiative and the “Emmett Till Unsolved Civil Rights Crime Act of 2007” which, through its reauthorization in 2016, charges the Department of Justice to investigate “violations of criminal civil rights statutes . . . result[ing] in

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<sup>8</sup> The FBI interviewed XXXXX, XXXXX, XXXXX, and XXXXX.

<sup>9</sup> In the formal FBI report of Bill Cox's interview, it appears Cox was only asked about his knowledge of Reverend Walker's activities. The reference to Cox's concurrence with C.A. Rawls' assessment of the condition of Elbert Williams's body appears in the FBI's reporting of Rawls' statement.

a death” that “occurred not later than December 31, 1979.”<sup>10</sup> The Department reviewed the FBI’s investigative file, other materials provided by Emison, as well as numerous media articles and archival information available from the internet and other government organizations.

Jim Emison has informed the Department that he knows the location of a weapon once owned by a now-deceased, likely participant in Elbert Williams’s abduction, and has urged the government to locate Williams’s body to determine if any forensic evidence exists that would link the weapon to Williams’s death. Emison has also suggested that DNA evidence might reveal the identity of unknown persons who participated in Williams’s death, some of whom might still be living.

### **Legal Analysis**

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. In 1940, at the time Elisha Davis, Jack Adams, and Thomas Davis were abducted and Elbert Williams was killed, federal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations – a limitations period which has long since expired. *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,<sup>11</sup> 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 of the United States Constitution, art. I, § 9, cl.3, 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, 610 (2003).

The Department of Justice has used non-civil rights statutes to overcome the statute of limitations challenge in a small number of cases, such as those involving kidnapping across state lines, *see United States v. Seale*, 600 F.3d 473 (5th Cir. 2010), or offenses occurring on federal land, *see United States v. Avants*, 367 F.3d 433, 440 (5th Cir. 2004). The available evidence in this case does not support a finding that any of the victims was transported across state lines. It is also unclear where Elbert Williams was assaulted. His body, however, was found in the Hatchie River in western Tennessee. Federal jurisdiction extends to crimes committed in waters “within the admiralty and maritime jurisdiction of the United States *and out of* the jurisdiction of

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<sup>10</sup> The abductions of Elisha Davis, Jack Adams, and Thomas Davis do not meet the formal criteria of a matter for investigation under the Till Act, given that the men were released unharmed. Even so, the circumstances surrounding their abductions have been reviewed along with the circumstances of Elbert Williams’s death.

<sup>11</sup> Any change in the statute of limitations would not apply to the abductions of Elisha Davis, Jack Adams, and Thomas Davis. The statute of limitations for any applicable state crime that could be charged in relation to their abductions, or to any obstruction charge concerning the investigation into the killing of Elbert Williams, has also expired.

any particular State.” 18 U.S.C. § 7(1) (emphasis added). This definition “specifically excludes waters subject to the control of state authorities,” *Casino Ventures v. Stewart*, 183 F.3d 307, 311 (4th Cir. 1999), such as the Hatchie River.

The portion of the Hatchie River closest to Brownsville, Tennessee, runs through a United States National Wildlife Refuge managed by the U.S. Fish and Wildlife Service and thus falls under federal enclave jurisdiction. *See* 18 U.S.C. § 7(3).<sup>12</sup> This area, however, was not designated as federal land until 1964, well after Elbert Williams was killed. For this reason, it is unlikely that the government could establish that this area was under federal jurisdiction at the time of Williams’s death. Even assuming that the government could establish that the Hatchie River and/or the surrounding area was under federal jurisdiction at that time, the government would nonetheless be required to prove that the assault upon Williams and his resulting death occurred on federal land. The available evidence does not permit the government to make this showing. Moreover, the lack of any known living witnesses precludes the government from developing such evidence.

No individual identified by the initial FBI investigation as being a potential suspect in the abductions or Elbert Williams’s death is known to be still alive, and no one has identified any other potential suspect known to be still alive. Because it has been over 75 years since the abductions and Williams’s death, it is extremely unlikely that anyone involved in those events, or anyone who has direct knowledge of those events, is still alive. Even if a participant or witness was identified and located, it is equally unlikely that this person’s memory of the events remains vivid and reliable such that new investigative leads could be pursued.

Prosecution could also not be premised on forensic evidence. The location of Elbert Williams’s remains is unknown. FBI laboratory personnel have explained that given the length of time his remains were in the river and the passage of time since his burial, it is extremely unlikely that a present-day examination of his remains, even if located, would yield DNA evidence that could be used to identify a perpetrator or generate other forensic evidence that could further the investigation. In addition, assuming ballistic evidence was recovered with Williams’s remains and traced to the suspected weapon, those findings would indicate only that the firearm was used in a shooting; it would not provide conclusive evidence of the shooter’s identity. Although, coupled with other evidence, we might ask that a jury infer that the firearm was fired by its owner, Jim Emison indicated that the owner of the weapon is now deceased; as such, he cannot be prosecuted. Finally, the passage of over 75 years since the time of Williams’s

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<sup>12</sup> Any land that falls under the definition of 18 U.S.C. § 7 is in the special maritime and territorial jurisdiction of the United States, which is often referred to as federal enclave jurisdiction. Because such lands are deemed to be federally-owned land, the Constitution gives Congress the power to directly regulate it. For this reason, the federal government can pursue crimes, like murder and assault, if they occur in federal enclave jurisdiction, despite the fact that these crimes are usually penalized exclusively by state law.

death makes it extremely unlikely that any additional subject or witness – even an as-yet-identified subject or witness – is currently alive or able to testify at a trial.

In sum, the Civil Rights Division agrees with the opinion of the United States Attorney's Office for the Western District of Tennessee that this matter lacks prosecutive merit and should be closed.<sup>13</sup>

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<sup>13</sup> Then-U.S. Attorney Edward L. Stanton, III, concluded that, in his opinion and viewed in retrospect, the original federal investigation was incomplete. Although additional avenues of investigation could have been pursued at the time, further investigation and prosecution is unfortunately prohibited for the reasons set forth in this memorandum. Regardless of any shortcomings in the original investigation, a current investigation and/or prosecution is barred by the expiration of all applicable statutes of limitations, the lack of any additional avenues to assert federal jurisdiction, and the unavailability of potential witnesses and evidence.